4-514

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 208.

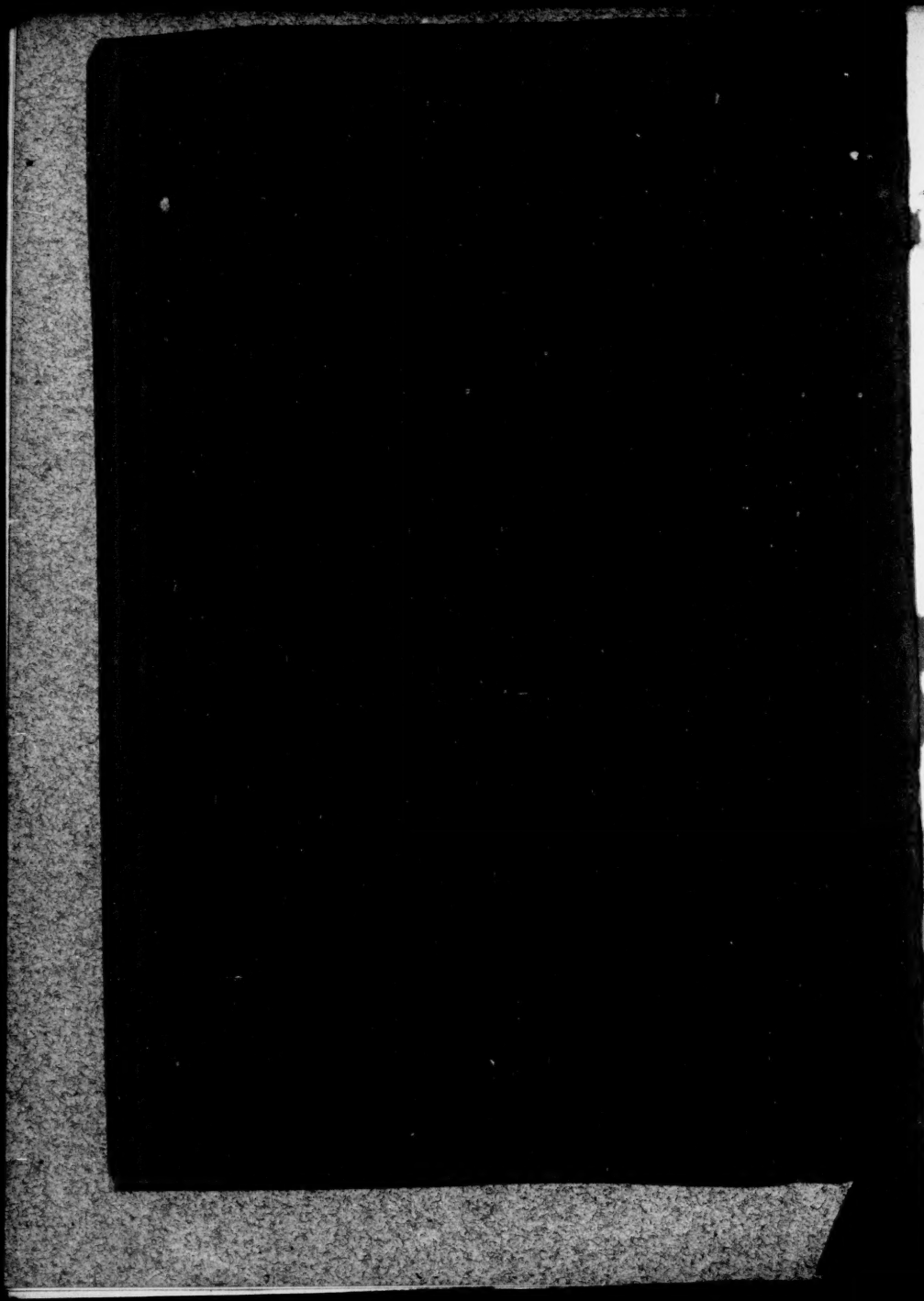
ANN DAVIS ET AL., PLAINTIFFS IN ERROR,

vs.

ANN CROUCH ET AL.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED OCTOBER 23, 1874.



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Court of appeals of Virginia, Richmond.

CROUCH, WHO SUES, &C., }
v. }
DAVIS' EXOR. }

To the honorable the supreme court of appeals of Virginia:

The petition of Ann Crouch, who sues by her husband and next fr'end, William S. Crouch, and her children, Jno. G. Crouch, Wm. M. Crouch, Thos. D. Crouch, Algernon and Columbia Crouch, the two last of whom are infants, who sue by the said Wm. S. Crouch, their father and next friend, and Ann Davis, respectfully showeth:

That the annexed transcript of the record of a suit lately decided in the chancery court of Richmond, presents the following case:

In the month of February, in the year 1863, Hector Davis, of the city of Richmond, the brother of your petitioner, Ann Crouch, died, having first made his last will and testament, seized and possessed of a very large real and personal estate. (See the inventory, page 6 of the record.) By his will he bequeathed to Jennie, and Sallie, and Bettie Davis the sum of $15,000 to be equally divided between them. To your petitioner, Ann, then and now a resident of Pennsylvania, and her four children, the sum of $20,000 to be invested in State stock by his executors; to his nephew, R. D. James, the sum of $5,000, and to your petitioners, Ann Crouch and her children, all the residue of his estate, and he appointed R. D. James his executor. (See the will, page 4 of the record.) James qualified as executor. (See the copy of the will, page 4 of the record.) The executor exhibited his bill in the circuit court of Richmond against the divisees for a settlement and distribution of his account. Sundry orders were made in the cause, and among them one on the 22d Sept., 1864, directing that the real estate should be delivered up to your petitioner, Ann Crouch and her children, and that he should render an account of his transactions before a commissioner. (See page 7 of the record, Exhibit C.) The original papers in the cause were all burned in the fire of 1865, and your petitioner,
2 Ann Crouch and her children, filed their petition, setting out the facts aforesaid and praying that the said executor might be compelled to deliver up the real estate to them and to account for and pay over to them the residue. (See page 1 of the record.)

Upon that petition a rule was made that the executor be attached for his contempt in failing to comply with the decree aforesaid unless he showed cause to the contrary, on 25th November, 1864. (See page 12 of the record.) To that rule, the executor filed an answer, in which he sought to defend himself upon the following grounds: 1st. That the estate consisted in part of bank stocks to the amount of $67,980.00, which were then believed to be worthless; $2,700.00, bonds of the confederate government, also worthless; $460.00 in stocks, also worthless; $14,550.00 in slaves which were afterwards emancipated by the Government, and there were sundry debts due by his testator which were yet unpaid. (See the answer, page 14 of the record.)

On the 5th day of October, 1865, the decree directing the real estate to be delivered up to your petitioners, Ann Crouch and her children, was set aside, and the said executor directed to render an account of his transactions as executor before one of the commissioners of this court. (See page 20 of the record.)

On the 10th November, 1865, the executor filed his bill against the devisees, (see page 26 of the record,) in which, after referring to the

previous proceeding in the cause, he charges, among other things, that he had invested "thirty odd" thousand dollars of the assets of the estate of his testator in confederate bonds under the order of the circuit court of the city of Richmond, and, therefore, that the estate would be unable to pay its debts and legacies and leave any residuum, if indeed it could pay the legacies.

The order of the circuit court, which the executor relies upon as directing him to invest the funds of the estate in confederate bonds, will be found at page 11 of the record, and is in the following words: "And the court doth grant the said R. D. James, executor as aforesaid, leave to invest the cash on hand belonging to the estate of his testator in interest-bearing bonds or certificates of debt of the Confederate States, or of the State of Virginia, or in any other sufficient bonds or securities in said State."

Your petitioners, Ann Crouch and her children, answered the said bill, (see page 41 of the record,) controverting the positions of the bill, charging the executor with gross maladministration of the estate in various pa'ticulars, to wit:

1st. In not paying the pecuniary legacies out of the funds in his hands, because legacies are always to be paid out of the currency existing at the death of the testator.

2dly. Because he did not invest the $20,000 for Ann Davis in State stock as directed by the will.

3dly. Because, as to his own legacy, the investment in confederate bonds is properly to be considered as his own investment.

The executor then went to account (see the account) and the commissioner made a report. (See page 47 to page 117.)

In November, 1869, your petitioner, Ann Davis, filed her an-
3 swer (see page 162 of the record) reiterating, as far as she was concerned, the grounds taken in the answer of his co-defendants, and charging the executor with maladministration.

To the report of the commissioner your petitioners then made the following exceptions: (See pages 117 to 119 and 179 to 185 and 233 to 234 and 270.)

Exceptions of Ann Crouch and her children, filed with Commissioner Evans' report:

DAVIS'S EXECUTOR *vs.* CROUCH. } Note for Comm'r Evans.

1. $1,000 pd. Bowcock. The ex'or in Virginia had no control over the estate in Arkansas, and therefore no right to expend money for it, and there is no proof that the agent was a proper one, or the amount necessary, or that it was expended for the estate.

2. $7,476.40. There is no proof, adequate, this general and lumping charge is correct. The details should be produced.

3. $2,210.31. Proof insufficient—not shown what the due-bill amounted to, what the sum paid on it previously was, and what the "all other transactions of all descriptions" were. The due-bill must be produced.

4. $2,500 paid for J. W. Willis' note.

"H. Davis" or "Hector Davis" was the partnership name, and if H. Davis is liable for any part of this debt, he is liable for only one-half of $2,500.

5. $7,841.28. There is no evidence that Hector Davis individually is

chargeable with this debt; the entry upon the books of the firm being a charge against the firm, and not against a member of it only. Many of the receipts, moreover, are dated in the life-time of Hector Davis, and are evidence therefore of payments by him, and not by his ex'or, and in this and in all similar cases such a charge is excepted to.

6. $8,633.21 invested in confed. bonds.

This is excepted to, because the testator directed $20,000 to be invested in State stock, and the court had no authority to change the investment, and if it had it did not do it, and because the legatees were bound to receive the money, and it was the duty of the executor to pay them, and no investment was necessary or proper except in State stock.

7. $2,375.31 paid B. W. Elmore and J. D. Burkes. These charges have no connexion properly, and should be made separately, so as to show what is charged to each. As it is, it is impossible to judge of them.

8. $7,180.85. There is no proof of this charge. An entry upon the books of Hector Davis, if made, is no evidence against him, unless it be produced and proved to have been made by himself or his clerk
4 in his life-time, and when he was attending to business. If the entry was made by his partner, that partner must prove the correctness of the entry.

Elmore's testimony as it stands amounts to nothing. This objection is to be applied to every similar entry.

☞ Mr. James must furnish the commission-accounts of Davis & Co., and the expense-account, so as to show the gross and nett commissions, and thus show what his share of the profits, as he properly terms them, amounts to. If there was a profit and loss account of sales it must be produced.

LYONS, *for Defendant.*

Exceptions to Commissioner Evans' report of March 5th, 1868, by Ann Crouch and her children, filed May 23, 1868:

DAVIS' EX'OR
vs.
CROUCH ET . } Exceptions to rept. of Com'r Evans of Mch. 1868.

Referring to my exceptions and note for the comm , which I wish considered as if here repeated, I submit the following additional exceptions:

9. To all charges to the estate for investments in confederate bonds.

To the extent of $20,000, if allowed at all, the investment must be charged as the bequest of the negro woman, Ann, and her children. The will directs the $20,000 bequeathed to her shall "be invested in State stock by my executor, and applied by my executors as aforesaid." The executor was bound to make that investment, and nothing can relieve him from it.

There was no need for him to petition the court for permission to invest the fund in his hands, and I presume that he did not file a copy of the will of Davis, and state what that will directed, nor state that there were debts which could be paid, but I cannot say positively, as the petition is not among the papers. But whether he did or not, the decree, of which a copy is filed, affords him no relief, for that decree does not order him to invest in confederate bonds, but says, "the court doth grant the said R. D. James, ex'or as aforesaid, leave to invest," &c.

It is obvious that the court did not intend to control the ex'or, and does not direct him to violate the will of his testator. The court had no power or authority to do so, and it would be most unjust to hold the court responsible for such an error when he had not the facts before him. The judge could have hesitated to reject his application and order him to obey the will and the law.

As to the surplus beyond $20,000, the executor should have paid the debts—confederate debts—with it, and especially the debt claimed by himself, of $9,593.87, which the commissioner in the most unprecedented and extraordinary manner allows him now to bring forward as a specie debt of $5,760.13.

10. And I except to the amount of $5,760.13, reported by the commissioner as a specie debt due to the executor for the commutation of the confederate debt mentioned in the preceding exception. This is the most extraordinary allowance, I think, I ever saw in a commissioner's report, except one.

By account A, the commissioner reported balance of $14,135.62 due from the executor to the estate on the 3d April, 1863, making in good money, as the counsel for the executor insists, between $200 and $300, of which the sum of $40,148.87 was due on the first day of January, 1864; and yet this same commissioner in the same report allows as a debt due from the estate to the executor a debt of $5,760.13 for commutation of a confederate debt of $9,593.87, and on the first of Jan. 1863! In other words, with four times as much money in his hands on the first of Jan., 1864, as would pay our debt, the commissioner allows or justifies the executor to hold up his debt until half of the estate nearly is lost by bad investments—illegal investments—(when the payment of his own debt was an investment which could not fail,) and then permits $9,593.87 of confederate debt to absorb $14,135.62, and leave a balance of $5,760 due to the executor, when, if the first sum ($9,593.87) be deducted from the second, ($14,135.62,) the executor is indebted to the estate $4,541.75.

Was ever such a monstrosity allowed before?

I insist that the debt to James should be considered as paid by the confederate investments which he made when he ought to have paid it.

11. I except to the debt reported as due to Holladay, $17,500—

I. Because it was the duty of the ex'or to relieve the estate from the debt, by requiring Holladay to sue James, the principal, and the ex'or is personally liable for the debt, unless he shows that James, the principal, was insolvent when the debt became due.

II. Because it is not shown that James was, or is, insolvent.

III. Because the debt was due on the first of January, 1862, and was payable in the currency of that time, (see Dearing v. Reuker,) and should have been paid, if necessary, out of the $40,000 held by the ex'or in 1863.

IV. If the debt was not payable in confederate currency, still the ex'or should have bought silver enough to pay it with instead of investing in confederate bonds, or should have submitted it to the court, if James was insolvent.

It was a gross and culpable breach of duty not to do so, for which the ex'or is responsible to the extent of his bad investments.

V. Because it was the duty of the ex'or to pay all debt pari passu, and a breach of duty, for which he is liable, to pay confederate debts in full, and leave specie debts unpaid.

12. I except to the debt reported to be due to Sallie and Bettie Davis, $4,409.24.

6 I. Because the bequest of $15,000 to them is a satisfaction of the debt.

II. Because the report of Fleming, upon which the allowance is made, was made after the death of Hector Davis, and when his estate was not only unrepresented, but the report shows that the amount reported is probably not due, and it was the most culpable negligence in the executor not to have a proper settlement made. But the settlement is void, because made when Davis was dead and unrepresented, and the wonder is, that said commissioner should receive it as a voucher. I invite the attention of the court to the remarks of Commissioner Fleming upon his own report, which I suppose our commissioner did not read.

III. Because as much of this debt as is due is a debt of the highest dignity, and ought to have been paid before any other debt or investment, and the executor is personally liable for it to the extent of all his bad investments, and the confederate debts which he paid must also, if necessary, be treated as unpaid; and

13. I except to the claim of Lydia Ransom, $240. Hector Davis was an unmarried man, and if he had a child it was a bastard, for whom he was not bound except by special contract. There is no proof that he had a child or that he contracted for its board.

14. I except to the claim of W. L. Day for $150.15. This was a confederate debt, if any, of date 17th of March, 1862. The ex'or always had money to pay it, and while the commissioner reports a large balance in confederate money against the ex'or, he reports this confederate debt against the estate (which the ex'or ought to have paid in confederate money) as a specie debt.

15. I insist that the executor shall be charged with every debt reported by him "doubtful," unless he obtained judgments against them, because it was his duty to have obtained judgments against all who do not pay and were not deemed insolvent.

16. I except, also, to the failure of the executor to sell the bank-stocks and insurance-stocks to pay the debts to the relief of the real estate, and insist that the ex'or shall be charged with their value.

17. I except to the credit in account B for sales of city of Richmond stock, because it was unwise and unnecessary.

18. I except to all debits for money paid to Ann Davis. It was the duty of the executor to invest her money in State stock, and she was entitled to the interest upon that, whether it was much or little, and nothing more, and having failed to do so, he is chargeable with the legacy and the interest upon it, and the estate is not responsible for it. The ex'or chose to violate the will and invest in confederate bonds, and he must take the confederate bonds and pay Ann Davis.

19. I except to all the commissioner allowed to the ex'or, because of his maladministration.

ANN CROUCH, *for herself and her children,*
By JAMES LYONS, *her counsel.*

MAY 23d, 1868.

7 Returned with commissioner's report of May 4th, 1870.

Note for Commissioner Evans.

1. Mr. James has sworn that he was a partner of Hector Davis, and claims a certain sum due to him as his share of the profits.
(If there were written articles, I require him to produce them.)

It is obvious that the court did not intend to control the ex'or, and does not direct him to violate the will of his testator. The court had no power or authority to do so, and it would be most unjust to hold the court responsible for such an error when he had not the facts before him. The judge could have hesitated to reject his application and order him to obey the will and the law.

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II. Because it is not shown that James was, or is, insolvent.

III. Because the debt was due on the first of January, 1862, and was payable in the currency of that time, (see Dearing v. Reuker,) and should have been paid, if necessary, out of the $40,000 held by the ex'or in 1863.

IV. If the debt was not payable in confederate currency, still the ex'or should have bought silver enough to pay it with instead of investing in confederate bonds, or should have submitted it to the court, if James was insolvent.

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II. Because the report of Fleming, upon which the allowance is made, was made after the death of Hector Davis, and when his estate was not only unrepresented, but the report shows that the amount reported is probably not due, and it was the most culpable negligence in the executor not to have a proper settlement made. But the settlement is void, because made when Davis was dead and unrepresented, and the wonder is, that said commissioner should receive it as a voucher. I invite the attention of the court to the remarks of Commissioner Fleming upon his own report, which I suppose our commissioner did not read.

III. Because as much of this debt as is due is a debt of the highest dignity, and ought to have been paid before any other debt or investment, and the executor is personally liable for it to the extent of all his bad investments, and the confederate debts which he paid must also, if necessary, be treated as unpaid; and

13. I except to the claim of Lydia Ransom, $240. Hector Davis was an unmarried man, and if he had a child it was a bastard, for whom he was not bound except by special contract. There is no proof that he had a child or that he contracted for its board.

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19. I except to all the commissioner allowed to the ex'or, because of his maladministration.

ANN CROUCH, *for herself and her children,*
By JAMES LYONS, *her counsel.*

MAY 23d, 1868.

7 Returned with commissioner's report of May 4th, 1870.

Note for Commissioner Evans.

1. Mr. James has sworn that he was a partner of Hector Davis, and claims a certain sum due to him as his share of the profits.

(If there were written articles, I require him to produce them.)

2. He now says, as I am told, that his interest in the partnership was commission upon the profits.

3. He claims that his commission shall be paid him in gold.

Reply.

1. No matter under what name he took or claims his share of the profits, the fact that he takes a share of the profits makes him a partner if it be a share of nett profits, because that makes him responsible for losses necessary. (Story on Partnership, § 34, page 53, note' 3 and 4; § 35, 36, note 2.)

2. Being entitled to a share of the profits, it is a conclusion of common sense and common honesty, too plain to admit of argument, that he must take the profits actually made, whether it is in horses, cows, mules, money, or paper. Otherwise, his co-partner, whose interests are equal to his, would call upon him to make good his profits in gold, and ruin him.

3. If not partner, he was an agent on commission. It is said every partner is an agent of the partnership, but no partner is entitled as such to a commission.

But every agent must take his pay or commission in the money he collects. Otherwise this strange conclusion would follow: An attorney-at-law collects $10,000 in greenbacks when they are 20 per cent. below par for a stipulated commission; he must take his commission in greenbacks, and no attorney would hazard his reputation as an honest man, as well as a lawyer, by offering to pay his client in greenbacks and himself in gold! The question is too plain to discuss. The attorney who would make the demand must be a fool as well as a knave.

Respectfully submitted.

JAMES LYONS.

FEB'Y 23, 1870.

Exceptions of defendants endorsed on Exhibit X X X X.

Exceptions to the within report.

Mrs. Crouch and her children and Ann Davis except to this report, for the reasons, causes, and errors assigned in the exceptions of December, '65, and May, '68, to the report returned in Feb'y, 1868, which I wish to be considered as repeated here, except that relating to the
8 debt claimed by R. D. James, which is now excepted to, because it is not treated as having been fully paid out of the funds of the ex'r, and which it was his duty to apply to that debt.

JAMES LYONS,
Counsel for Exceptors.

In copying this paper, this exception is not to be copied on it, but in ac't X X X X, No. 45.

J. L.

The case then came on to be heard before the court of chancery, when, on the 22d day of July, 1870, the court rendered the following decree:

DAVIS' EX'OR
vs.
CROUCH ET ALS. } Two cases.

In the chancery court of the city of Richmond.

This day these causes came to be further heard on the papers formerly read; and also on the report of Commissioner Thomas J. Evans, bearing

date on the 4th day of May, 1870, and filed in the causes, together with all the special statements, depositions, exhibits, and other papers referred to, and returned with the said report; and also upon all the exceptions made to the said report by the counsel for the respective parties to the said suits, and was argued by counsel. Whereupon the court, having duly considered the same, for reasons assigned in his opinion, which is filed among the papers in the cause, doth adjudge, order, and decree as follows, to wit:

That the following exceptions on the part of Ann Crouch and others, by their counsel, James Lyon, esq., be, and they are hereby, overruled, to wit:

In the paper marked "17," (note of Mr. Lyons for Commissioner Evans, of the 18th Feb'y, 1868,) exception 1, for Bowcock's receipt for $1,000; exception 2, P. T. Dawson's receipt for $7,476.40; exception 3, Joseph Stern's claim for $2,210.31; exception 4, J. W. Wells' note, $2,500; exception 5, Hector Davis & Co., $7,841.28; exception 6, investments in confederate State bonds and funds; exception 7, B. W. Elmore, $2,375.31; exception 8, W. H. Gwin, $7,180.85.

In the paper marked "25," (exceptions to commissioner's report by defendants, May 23d, 1868, exceptions to commissioner's report of May, 1870,) exception 9, investments in confederate bonds; exception 11, as to the debt reported to be due to Holladay's executors; exception 15, proposing to charge the executor with all debts reported by him "good" and "doubtful;" exception 16, because of the failure of the executor to sell the bank-stocks and insurance-stocks; exception 17, on account of the sales of the bonds of the
9 city of Richmond; and exception 19, on account of the allowance of commissions to the executor.

That the exception No. 10, in the said paper marked "25," of the allowance made by the commissioner in his report of February, 1868, of a debt of $5,760.13 in favor of R. D. James against the estate of Hector Davis, has been obviated by the said commissioner's report of May, 1870, in which the said commissioner has reconsidered the question, and has disallowed the said claim; and the question is now presented to the court by the exception made on the part of R. D. James, by his counsel, to the action of the commissioner in reconsidering and disallowing the said claim.

The court is of opinion that the last report of the commissioner, in respect to this claim, is correct in disallowing and rejecting this claim, and the exception thereto, on the part of the said R. D. James, is therefore overruled.

That the exception No. 12, in the said paper marked "25," is not sustained upon any of the grounds taken by Mr. Lyons, as counsel for the defendants Ann Crouch and others; and that so far as these objections are concerned, the court is prepared to overrule them, and to confirm the accounts as reported by Commissioner Evans in his report of May, 1870. But the court is of opinion that the said report of the said commissioner, and the said account of Hector Davis, as guardian of Jennie, Sallie, and Bettie Davis, ought to be recommitted (and the court doth therefore recommit the same) to the said commissioner with instructions as follows, to wit:

1. To permit the executor of Hector Davis, if he can, to establish the credits which have not been heretofore allowed to the said guardian in the accounts heretofore reported by the production of proper vouchers or other evidence, and to show any further credits to which the estate

of the said guardian may be entitled on account of subsequent transactions.

2. To restate the accounts, with such charges for interest against the guardian as are indicated in the said opinion of the court, filed with the papers and as are authorised and required by law.

And the exception to those accounts taken as aforesaid by the counsel for Ann Crouch and others is hereby overruled.

That the exception No. 13 in the said paper marked 25, as to the claim of Lydia Ransom for $240, is sustained, and the said claim is disallowed and rejected.

That the exception No. 14 in the said paper marked 25, as to the claim of W. L. Day for $150 for a balance of account, be sustained, for the purpose of ascertaining the true date of the transaction, and that the same be recommitted to the said commissioner for that purpose, with instructions, if the said debt was contracted before the war, to allow the same in full, and if it were a confederate debt to scale it according to the act of assembly.

That the 18th exception, in the said paper marked 25, on account of the moneys paid to Ann Davis, for reasons assigned in the said opinion, filed with the papers, be reserved for future consideration, when the demands of creditors shall have been finally adjudicated, and a fund provided for their payment; and until the further order of the court herein the said exception is neither sustained nor overruled, but reserved for future decision.

And the court doth further adjudge, order, and decree, that the report of the said commissioner Evans of the 4th day of May, 1870, and the accounts therewith reported, be approved and confirmed in all respects, except so far as the same is reversed or modified expressly by the foregoing decree, and except as to such matters as by the foregoing decree are expressly recommitted to the said commissioner. And the said commissioner is directed in conformity with the said decree to proceed to execute the orders of the court in the premises.

By this decree your petitioners are very much aggrieved, and they are advised the same is erroneous, because the exceptions of your petitioners to the commissioner's report should have been sustained and not overruled. The grounds of the exceptions are fully stated in them, but your petitioners especially assign for error the following causes, to wit:

1st. That the legacy to James should have been treated as a satisfaction of the debt due to him.

2d. That the legacies to Jennie, Sallie, and Bettie Davis, who were the wards of the testator, should have been regarded as a satisfaction of the debt due to them, and those legatees and the legatee James should have been put to their election to claim either the debt or the legacy, and not *not* permitted to claim both, and it was error to allow them to claim both.

3rdly. That the legacy to Ann Davis should have been invested according to the direction of the will, and the failure to do so by the executor made him personally responsible for the legacy to the full amount which the investment would have benefited the legatee. The will having directed positively that the investment should be made in State stock, and there being no impediment to it, the executor had no discretion, but was bound to make it. No court had any authority to change the investment directed by the will; but, in fact, the court did not change it. It gave the executor leave (which it had no authority to

give) to invest the funds in confederate bonds, or State bonds, or other good securities in the State, thus leaving the executor perfectly at liberty to pursue the direction of the will, and it was his duty to do so. His failure to do so was a clear devastavit.

4th. It was the duty of the executor to have paid off the legatees in the currency of the day, which was in his possession. Debts and legacies stand upon a very different footing. The latter are voluntary donations, not affected by the constitution of the State or the United States, and they are to be paid out of the currency in circulation at the time that the bequest is made, which is when the will is admitted to probate; otherwise the purpose of the testator might be utterly defeated, and his whole estate absorbed by a single legacy. Thus when
11 he bequeathed $20,000 to Ann Davis, out of a personal estate say of $100,000, if the currency was at 5 for 1 in gold, and the legacy is to be treated as a gold demand, it would take the whole estate to pay it; but even debts, contracted and falling due during the confederacy, were payable in confederate money.

5th. The entire debt due to the executor should have been treated as paid, and it was an error to scale it. It was emphatically a confederate debt, it being the executor's share as a partner of the profits of the partnership, which profits were received by himself as the surviving partner, and his debt was therefore paid; and he had no right to pass his share of those partnership funds into his account as executor, and thus create a debt from his testator's estate to himself, to be paid in other funds. And if the profits thus received by him and misapplied were lost thereby, he alone is responsible for the loss.

6th. It was also error in the court to excuse the executor from paying the other confederate debts, or tendering payment of them in the currency in his possession.

7th. It was a devastavit in the executor not to sell out bank-stock and other corporate stocks, and apply the money to the payment of the debts of the estate as well as the legacies; and if there was any debt which could not be paid in confederate currency at par, it was the duty of the executor to purchase specie with it and so pay the debts, and his failure to do so was a devastavit.

For these and other errors apparent upon the record, your petitioners pray that an appeal may be allowed them from the said decree, and that the same may be superseded, reversed, and annulled.

PETITIONERS,
By Counsel.

I am respectfully of opinion that the decree complained of in the annexed petition is erroneous and ought to be reversed.

JAMES LYONS,
One of the counsel practicing in the Court of Appeals.

JAN'Y 14, 1871.

VIRGINIA:

Pleas in the chancery court of the city of Richmond, held at the court-house in said city on the 22nd day of July, 1870.

Be it remembered that heretofore, to wit, on the 22nd day of September, 1865—

Came Ann Crouch, who sues by her husband and next friend,

12 William S. Crouch, John E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon Crouch, and Columbia Crouch, the last two of whom are infants under the age of twenty-one years, who sue by the said William S. Crouch, their father and next friend, and filed their petition, which is in the words and figures following, to wit:

Petition.

To the honorable John A. Meredith, judge of the circuit court of the city of Richmond:

Complaining, shew unto the court your oratrix, Ann Crouch, who sues by her husband and next friend, William S. Crouch, and her children, John E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon and Columbia Crouch, the two last of whom are infants under the age of twenty-one years, who sue by the said William S. Crouch, their father and next friend, that in the month of , in the year 1863, Hector Davis, of the city of Richmond, the brother of your oratrix, departed this life after having made his last will and testament in writing, a copy of which is herewith exhibited, marked "A," and prayed to be taken as part of this bill. By that will he bequeathed to *he bequeathed to* his neices, Jennie, Sally, and Bettie Davis, the sum of fifteen thousand dollars, to be equally divided between them, a servant woman, named Ann, her freedom, and to her children, Jennie, Audubon, and Victoria, the sum of $20,000, to be invested in Virginia State stock, the said woman and her children to be removed out of Virginia. To R. D. James, of Goochland, he bequeathed five thousand dollars, and the residue of his estate he bequeathed to your oratrix and her children, and he appointed the said R. D. James and Franklin Matthews his executors, of whom R. D. James only took upon himself the burthen of executing the said will. The said Davis left personal property appraised at $91,020, ninety-four thousand and twenty dollars, as will appear by the copy of the inventory and appraisement herewith exhibited, marked "B," and a large real estate in the city of Richmond and elsewhere.

The executor exhibited his bill in this honorable court against the devisees for the settlement and distribution of the estate. Sundry decrees were rendered in the cause, which now remain of record in this honorable court, and of which copies will be exhibited as soon as they can be obtained, except one pronounced on the 25th day of November, 1864, of which a copy is herewith exhibited, marked "C," and prayed to be taken as part of this bill. By that decree the court decided that "Ann Crouch and her children are entitled to the real estate of Hector Davis, deceased, from the date of his death, with the rents accruing therefrom since his death; doth adjudge, order, and decree that the said real estate be delivered up to the said Ann Crouch and her children, and that the said James pay to her the said rents less the charges and expenses of said real estate and a commission of seven per cent. for collecting said rents."

13 The said cause was depending and undetermined when the original papers were all burnt, as your oratrix is informed and believes, in the great fire in Richmond in the month of April, 1865, but the said ex'or had rendered no account of his transactions as the ex'r of the said Davis.

Notwithstanding the said decree, the said James has failed and re-

fused to deliver the said real estate to your oratrix or to pay her the rents of the same, but has continued to hold the said property and collect the rents thereof, all of which is contrary to equity and *and* good conscience, in manifest fraud of the rights of your oratrix and her children, and in contempt of the authority and decree of this honorable court.

In tender consideration whereof, your oratrix and her children aforesaid pray that he may be attached for his contempt aforesaid, and committed until he complies with the said decree by delivering the real property aforesaid to your petitioner, and accounts for and pays over to your oratrix the rents aforesaid; and that he may be compelled to account for and pay over to her and her children the residue of the estate of said Davis which remained after satisfying the specific legacies aforesaid, and for such other relief as the case requires and to equity may seem meet.

May it please, &c.

LYONS, *P. Q.*

CITY OF RICHMOND, *to wit:*

This day William S. Crouch made oath before me that the facts stated in the within bill are, he verily believes, true.

Given under my hand this 21 day of September, 1865.

P. C. NICHOLAS,
Notary Public.

Exhibit A, with petition.

RICHMOND, *March 21st*, 1859.

I, Hector Davis, of city of Richmond, State of Va., do hereby make this my last will and testament: Item 1st. I give to my nieces, Jannie, Sally, and Bettie Davis, the sum of fifteen thousand dollars, to be equally divided between them. I give to a servant woman, Ann, of mine, her freedom, to be removed out of the State, with her four children, Jannie, Audubon, and Victoria, and after their removal the sum of twenty thousand dollars, she, Ann, to have the interest on $\frac{1}{5}$ of the amount, and the interest of the balance to be expended in raising the said children til' they become of age; then the principal to be given them. I wish said amount to be invested in State stock by my executors and applied as aforesaid.

14 I give my nephew, R. D. James, of Goochland, the sum of five thousand dollars. Whatever balance I may be worth I want given to my sister, Ann Crouch, and her children. I appoint R. D. James and Franklin Matthews my executors to this my last will and testament.

As witness my hand and seal.

HECTOR DAVIS.

Witnesses:
B. W. ELMORE.
S. N. DAVIS.

In the circuit court of the city of Richmond, March 13th, 1863.

This writing, purporting to be the last will and testament of Hector Davis, deceased, was this day produced in court for probat' by R. D. James, one of the executors therein named, and proved by the oaths of B. W. Elmore and S. N. Davis, the subscribing witnesses thereto, and

was ordered to be recorded; and on the motion of the said R. D. James, who took the oath of an executor, and, with John B. Davis, N. M. Lee, George D. Pace, and R. H. Davis, his securities, who testified on oath as to their sufficiency, entered into and acknowledged a bond in the penalty of two hundred thousand dollars, conditioned as the law directs, a certificate was granted him for obtaining a probat' of the said will in due form, liberty being reserved to Franklin Matthews, the other executor named in the said will, to join in the said probat' when he should think fit.

Teste:

BENJA. POLLARD, *Clk.*

A copy. Teste:

BENJA. POLLARD, *Clk.*

Exhibit B, with petition.

347 shares Traders' Bank stock, @ $125		$43,375	
103 " Farmers' " @ 110		11,330	
10 " Exchange " @ 115		1,150	
75 " Commonwealth Bank stock, @ 125		9,375	
25 " Bank of the city of Petersburg stock, @ 110		2,750	
			$67,980
2 Virginia State bonds, 1 of $2,000 and 1 of $1,000			3,900
1 share Roanoke Vall'y Railroad stock			100
3 shares of stock of Virginia Life Insurance Company			360
1 bond of the city of Richmond			1,000
15 1 bond of the Confederate States of America		$1,000	2,000
2 bonds of the Confederate States of America, $50 each		100	200
1 bond of the Confederate States of America		500	500
Woman Polly		1,000	
Girl Susan		2,150	
Man William Isham		1,500	
Man Joe		1,350	
Boy John		2,200	
Woman Eliza and girl Peachy		3,600	
Girl Roberta		2,750	
			14,550
5 chairs, at $6 each		30	
1 bedstead, bed, and bedding		200	
1 " " "		50	
1 wardrobe		100	
Cooking utensils, table ware, &c		50	
			430
			$91,020

B. W. ELMORE.
DAVID McDANIEL.
JAS. C. JOHNSON.

Returned to the clerk's office of the circuit court of the city of Richmond, September 22d, 1863.

Teste.

BENJA POLLARD, *Clerk.*

A copy. Teste.

BENJA. POLLARD, *Clerk.*

Exhibit C, with petition.

In the circuit court of the city of Richmond, November 25th, 1864.

R. D. JAMES, IN HIS OWN RIGHT AND AS EXecutor of Hector Davis, deceased, pl't'ff,
against
WILLIAM S. CROUCH, AND ANN HIS WIFE, John E. Crouch, William M. Crouch,
16 Thomas D. Crouch, Algernon Crouch, Columbia Crouch, Thomas J. Rutherford, and Jennie his wife, Sally Davis and Bettie Davis; and Ann, Jennie, Audubon, Victoria, and Matilda, persons of color; the said Algernon and Columbia Crouch, Sally and Bettie Davis, and Jennie, Audubon, Victoria, and Matilda, being infants under the age of twenty-one years—the four first-named infants by Marcellus T. Starke, their guardian ad litem, appointed to defend their interests in this suit, defts.

This cause in which the defendants Ann, Jennie, Audubon, Victoria, and Matilda have been proceeded against as absent defendants in the mode prescribed by law, came on this day to be heard on the bill of the plaintiff, the answer of the adult defendants, the answer of the infant defendants Sally Davis, Betty Davis, Algernon Crouch, and Columbia Crouch, by their guardian ad litem, with replications to both of said answers, the petition of Thomas T. Giles, receiver of the Confederate States, the petition of R. D. James, executor of Hector Davis, dec'd, this day filed, and the exhibits, and was argued by counsel.

On consideration whereof the court, without deciding any other questions at this time, doth adjudge, order, and decree that the said R. D. James, executor as aforesaid, do sell at one of the public auction rooms in the city of Richmond, for cash, at auction, the negro girl named Roberta, in the petition of said James mentioned, and report his proceedings herein to the court.

And the court being of opinion that Ann Crouch and her children are entitled to the real estate of Hector Davis, deceased, from the date of his death, with the rents accruing therefrom since his death, doth adjudge, order, and decree that said real estate be delivered up to said Ann Crouch and her children, and that said James pay to her the said rents, less the charges and expenses of said real estate, and a commission of seven per cent. for collecting said rents.

And the said R. D. James is directed to render an account of his transactions as executor as aforesaid before one of the commissioners of this court, who is directed to audit, state, and settle the same; and that said commissioner take an account of all assetts belonging to said estate, and of all claims due by the same, giving notice by publication in some public newspaper, once a week for four weeks, for all persons to prove their claims before him, and report his proceedings herein for a further decree.

A copy. Teste.

BENJA. POLLARD, *Clerk.*

17 Exhibit filed with petition.

VIRGINIA:

In the circuit court of the city of Richmond, May 21st, 1863: On the motion of R. D. James, executor of the last will and testament of Hector Davis, deceased, ordered that B. W. Elmore, D. McDaniel, P. S. Dawson, James C. Johnson, and Evan F. Ragland, or any three of them, being first duly sworn for that purpose, do truly and justly appraise, in current money, the personal estate of the said Hector Davis, deceased, which may be to them produced or shown, and return the appraisement under their hands to the clerk of this court.

A copy. Teste:

BENJA. POLLARD, *Clerk.*

City of Richmond, to wit, June 25th, 1863:

This day personally appeared before me, J. H. Pleasants, a justic' of the peace for said city, B. W. Elmore, James C. Johnson, and David McDaniel, appraisers, appointed by the circuit ct. of said city for the estate of Hector Davis, dec'd, and made oath that they would truly and faithfully appraise said estate.

J. H. PLEASANTS, *J. P.*

The undersigned, three of the appraisers named in the foregoing order, after being duly sworn, appraised all the personal estate shewn to them, and respectfully report the following as their appraisement of said estate.

Exhibit filed with petition.

VIRGINIA:

In the circuit court of the city of Richmond, December 3d, 1864.

R. D. JAMES, IN HIS OWN RIGHT, AND AS EXECUTOR of Hector Davis, dec'd, pltff.,
against
WILLIAM S. CROUCH AND ANN, HIS WIFE, JOHN E. Crouch and other def'ts.

On the motion of the plaintiff by counsel, and for reasons appearing to the court, it is ordered that the decree entered herein on the 25th day of November, 1864, be so far amended as to appoint William F. Watson a special commissioner to audit and settle the accounts directed to be settled by said decree.

A copy. Teste:

BENJA. POLLARD, *Clerk.*

18 Exhibit filed with petition.

VIRGINIA:

In the circuit court of the city of Richmond, March 11th, 1865.

R. D. JAMES, IN HIS OWN RIGHT, AND AS EXECUTOR of Hector Davis, deceased, pltff.,
against
WILLIAM S. CROUCH AND ANN, HIS WIFE, JOHN E. Crouch and other def'ts.

This day, R. D. James, executor of Hector Davis, deceased, filed a petition herein; and thereupon the cause coming on to be heard on the papers formerly read and the said petition. On consideration whereof

the court doth adjudge, order, and decree that the said R. D. James, as executor, as aforesaid, do sell the slaves, Polly and John, in the petition mentioned, at public sale for each, at one of the auction-houses in this city, after advertising the time, place, and terms of sale for three days in one of the newspapers of the city of Richmond, and report his proceedings herein to the court. And the court doth grant the said R. D. James, executor as aforesaid, leave to invest the cash on hand belonging to the estate of his testator in interest-bearing bonds, or certificates of debt of the Confederate States, or of the State of Virginia, or in any other sufficient bonds or securities in said State; which said bonds or securities are to be payable to the said executor, and are to express on their face that the same are not transferable, except by the order of some circuit court of competent jurisdiction.

A copy. Teste:

BENJA. POLLARD, *Clerk.*

And on the same day, at a circuit court of the city of Richmond, held in the court-house in the said city, the following order was entered:

VIRGINIA:

In the circuit court of the city of Richmond, Sept. 22d, 1865.

R. D. JAMES, IN HIS OWN RIGHT, AND AS EXECUTOR of Hector Davis, deceased, pl't.,
against
WILLIAM S. CROUCH AND ANN, HIS WIFE, JOHN E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon Crouch, Columbia Crouch, Thomas J. Rutherford, and Jennie his wife, Sally Davis and Betty Davis; and Ann, 19 Jennie, Audubon, Victoria, and Matilda, persons of color; the said Algernon and Columbia Crouch, Sally and Betty Davis, and Jennie, Audubon, Victoria, and Matilda, being infants under the age of twenty-one years—the four first-named infants by Marcellus T. Starke, their guardian ad litem appointed to defend their interests in this suit, def'ts.

The defendants, Ann Crouch, by her husband and next friend, William S. Crouch, and her children, John E. Crouch, William M. Crouch, Thomas D. Crouch, Algerson Crouch, and Columbia Crouch, the two last of whom are infants under the age of twenty-one years, by the said William S. Crouch, their father and next friend, this day filed their petition herein, verified by the oath of the said William S. Crouch, alleging that the papers in this cause have been burnt, whereupon on their motion the court doth order that this cause be docketed, and on their motion the court doth adjudge, order, and decree that the plaintiff, R. D. James, be attached for his contempt in failing to comply with the decree of this court made in this cause on the 25th day of November, 1864, unless he shows sufficient cause to the contrary before this court on Saturday the 30th day of the month, being previously served with a copy of this decree.

A copy. Teste:

BENJ. POLLARD, *Clerk.*

Endorsed: Executed on R. D. James, Sept. 28th, 1865, by delivering him a copy of the within.

JNO. W. WRIGHT, *S. C. R.*

And at another day, to wit, at a circuit court of the city of Richmond, held in the court-house in the said city, on the 30th day of September, 1865, by leave of the court, R. D. James filed his answer to the above petition in the words and figures following, to wit:

Answer.

The answer of R. D. James, in his own right and as executor of Hector Davis, deceased, to a rule of the circuit court of Richmond City, issued on the 22nd September, 1865, in the case of "Davis' ex'or et als. v. Crouch et als."

This respondent, for answer, &c., saith:

That at the time when the decree in the said rule mentioned was made, to wit, on the 25th day of November, A. D. 1864, this respondent made no objection thereto, because at that time he had reason to believe and did believe that the other property of the estate would be amply sufficient to pay the debts and special legacies bequeathed by the will of the said Hector Davis, and this respondent was therefore willing that the real estate in the said decree mentioned, being included in "the balance" which was left to the said Ann Crouch and her children, should be delivered to them; and this respondent is advised, that if he had made any objection the decree would probably not have been entered at that time. But he was desirous, as far as he could, to promote the wishes and interest of the said residuary devisees, believing that it would not prejudice the special legatees or creditors.

But since the date of the said decree a great change has taken place in the condition and finances of the country, and especially in the property of the said Davis' estate. Upon reference to the inventory and appraisement of the said estate, filed and recorded in this court, and of which a copy is filed with the petition herein, it will be seen that the whole amount thereof was $91,020. Of this amount $67,980 consisted of bank stocks, all of which are now believed to be worthless, $2,700 in bonds of the Confederate States of America, which are equally so, $460 in stocks also worthless, $14,550 in slaves that have been set free by the results of the war, (except three who were sold, and the proceeds of sale invested in Confederate States bonds or remained uninvested in confederate currency.) In fact, of all of the estate in the said inventory and appraisement mentioned, there remains only the following, valued at the date of the 25th June, 1863, as follows:

$3,000 Virginia State bonds, valued at	$3,900
$1,000 bond of city of Richmond, valued at	1,000
Household and kitchen furniture	430

It was not in the power of this respondent to dispose of these stocks and other assets, and pay off the special legacies, because the only currency which could have been obtained for them was that of the said Confederate States, and the legatees were unwilling to receive that currency, so that if this respondent had made a sale with that view, the proceeds would have remained in his hands in that currency, and have become as worthless as the property left by the testator himself. Under these circumstances your respondent was advised that it was his duty not to disturb the property in question, but to hold it in the condition he received it, until he should be otherwise directed, or some change of circumstances might enable him to settle with the legatees.

In connection with this subject, this respondent begs leave to suggest,

that, by several orders made in this cause from time to time, he was expressly authorized to make investments of the moneys in his hands in certificates of debt of the Confederate States, which were then considered as the best securities for investment, and such investment would have been made of the proceeds of the said stocks if they had been sold.

This respondent further states that being unable to settle with the special legatees, and considering that they were entitled in the
21 mean time to the interest of the said legacies, and that such of them as were orphans and infants (the nieces of the said testator and the children of the servant Ann) had an especial claim for their support at least, this respondent regarded it as his duty to provide for them out of the rents of the real estate, which was the only fund or resource available to him for that purpose, and he was advised that if there had been any court existing and exercising jurisdiction in such matters, the order of 25th November, 1864, would undoubtedly have been rescinded or suspended upon a proper understanding of the facts.

This respondent further states that at the time of entering the said decree of the 25th November, 1864, it was agreed that the said William S. Crouch should execute a refunding bond with security to your respondent in order to protect him from any responsibility and to secure the interests of the special legatees and creditors, and upon this condition this respondent agreed to make no objections to the transfer of the real property as decreed; this respondent states that on one occasion the said William S. Crouch came to Richmond for the purpose, but in consequence of the sickness of Mr. Pollard, the clerk of this court, the bond was not given nor the property delivered. This respondent at the same time suggested there ought to be a guardian appointed to represent the infant children of Mrs. Ann Crouch. No other application has been made to this respondent, until since the close of the war, when this respondent did decline to deliver the property, for the reasons already stated in this answer, until he should be able to consult its court and obtain its instruction on the subject.

This respondent further states that some weeks since, having heard that this court would shortly be again opened for business, he applied to his counsel for advice in the matter, and proposed to make an application to this court in the premises; that his counsel accordingly went up to the office and made enquiry for the papers of the cause and found that they had been destroyed, and his counsel thereupon advised him to wait a short time to see whether any proceedings would be necessary or whether the residuary devisees would acquiesce in the present possession of the real estate by your respondent. This respondent is advised that if the order of the 25th Nov'r, 1864, were carried into effect, it could only result in a short occupation by the petitioners, and the possession would have to be taken from them and account ordered, on behalf of the creditors and special legatees; and that to avoid this circuity of action and the delay and expense incident thereto, the court will act directly upon the subject as it is now presented, and make such order as shall conduce to the best settlement of the rights of all parties interested. This respondent states, in relation to the debts due by the testator, that they amount to between five and ten thousand dollars, which he has been unable to settle, because the creditors would not receive the confederate currency, and that he has been informed of one bond for $17,000, given by H. N. Jones, (who resides in Texas,
22 and as to whose solvency this respondent knows nothing,) in which the said testator was security for said Jones.

This respondent further states that in compliance with one of the orders of this court, made in this cause on the third day of December, 1864, this respondent placed his accounts in the hands of Mr. William F. Watson, now deceased, as a special commissioner, for settlement, and that they remained in his hands up to the time of his death. This respondent has made every effort in his power to obtain the said papers, and expects in a few days to receive them from Mr. R. W. Hughes, the personal representative of Mr. W. F. Watson, dec'd.

This respondent further states that in his declining to deliver the said real estate, as already stated, he had not the least idea of treating with undue respect the decree of this court; but, on the contrary, he was acting under the advice of counsel, as already stated, and with no other view or purpose than that of discharging his duty as executor, and of protecting the interests of parties entitled under the will of the testator, and with the purpose of being governed by the orders of this court when the facts that had occurred should be properly made known to it. And now, having fully answered, he prays to be hence dismissed, &c.

R. D. JAMES.

STATE OF VIRGINIA,
City of Richmond, to wit:

This day R. D. James personally appeared before me, Benjamin Pollard, clerk of the circuit court of the city of Richmond, in my office in the said city, and made oath that the establishments in the foregoing answer are true.

Given under my hand this 29th day of September, 1865.

BENJA. POLLARD, *Clerk.*

To which answer the petitioners replied generally.

Exhibit filed with answer of R. D. James.

In the circuit court of the city of Richmond, February 20th, 1864.

This day came R. D. James, executor of Hector Davis, deceased, and filed his petition. On consideration whereof the court doth grant him leave to invest in the cash on hand belonging to the estate of his testator in interest, ~~being~~ bonds or certificates of the Confederate States or of the State of Virginia, or any other sufficient bonds or securities in said State; which said bonds or securities are to be payable to the said executor, and are to express on their face that the same are not transferable except by the order of some circuit court of competent jurisdiction.

A copy.
Teste:

ALFRED SHEILD, *D. C.*

23 And at another day, to wit, at a circuit court of the city of Richmond, held in the court-house in the said city on the 6th day of October, 1865, on the motion of the plaintiff, by counsel, and for reasons appearing to the court, it is ordered that the decree entered in this cause on the 3d day of December, 1864, be set aside; and on the motion of the plaintiff, by counsel, it is ordered that R. D. James, executor of Hector Davis, deceased, do render an account of his transactions as executor as aforesaid before one of the commissioners of this court, who is directed to audit, state, and settle the same, and that the said commissioner take an account of all assets belonging to said estate and of all claims due by the same, giving notice by publication in some news

paper published in the city, once a week for four successive weeks, for all persons to prove their claims before him, which publication shall be equivalent to personal service of notice upon all parties; and that said commissioner report his proceedings herein for a further decree, with any matter specially stated deemed pertinent by himself, or which may be required by any of the parties to be so stated.

Exhibit filed by counsel of petitioners.

James Lyons, esq., atty. for Mrs. Crouch and others, in acct. with Lee & Goddin, agents.

1869.				
June	15.	By Clara Coleman, 1 m.'s rent, to 12th July, in advance	$20	00
July	12.	" Ida Bell, in part 1 m.'s rent, $17, to 7th inst	10	00
July	14.	" Clara Coleman, to 12 Aug't	20	00
Aug.	9.	" Ardelia Taylor, ½ m.'s rent of room to 1st inst	3	50
	11.	" Ida Bell, in full to 7th July	7	
	13.	" Clara Coleman, to 12th Sept	20	
	16.	" Ann Smith, rent of room 1 mo., to 1st inst	4	
	16.	" Mrs. Glenn, in advance to Sept. 12th, on act. rent, $33.33⅓	20	
	23.	" Ida Bell, on act. rent to 7th Aug	7	
Sept.	1.	" same, in full to 7 Aug	10	
	8.	" Ardelia Taylor, to 1st inst	3	
	9.	" Mrs. Glenn, in full to Sept. 12th	33	33
	13.	" Nellie Jefferson, 1 m.'s rent of room to 1st inst	3	
		" Ann Smith, " " " 1st inst	4	
		" Ida Bell, in part to 7th inst	7	
		" Martha Bohannan, in advance to 12th Octo., $20	10	
24	17.	" Clara Coleman, to 12th Octo., in advance	27	50
	28.	" Ida Bell, on act. to 7th Septr	5	
Octo.	2.	" same, in full to 7th Septr	5	
	7.	" Mrs. Glenn, in part to 9th Octo	25	
	11.	" Ann Smith, one mo.'s rent to 1st inst	3	
		" Francis Taylor, 1 mo.'s rent to 1st inst	3	
		" Ardelia Taylor, 1 mo.'s rent to 1st inst	3	
	13.	" Martha Bohannon, in advance to 12th Nov'r	20	
		" Ida Bell, on act. to 7th Octo	5	
	14.	" Mrs. Glenn, in full to 9th Octo	8	33
	15.	" Clara Coleman, to 12th Nov	27	50
Nov.	1.	" Ida Bell, on act. to 7th Octo	7	
	12.	" Martha Bohannan, to 12th Dec	20	
	13.	" Ida Bell, in full to 7th Octo	5	
	13.	" same, on act. to Nov. 7th	2	
		Carried forward	$328	16

Continued.

1869.				
Nov.	13.	" *by* amount fo'warded	$328	16

Charges.

1869.			
June	15.	For cash paid advertising rentals	$3
	24.	For cash paid W. Morris' bill, plastering and whitewashing house on Mayo st	16

Aug. 28.	For cash paid James Farrar's bill, rep'g hydrant to same	7	
Sept. 2.	For cash paid Howle & Phillips' bill, cleaning privy to same	15	
18.	For cash paid Booth, Spence & Co., papering same in part	35 20	
18.	For cash paid Liggon & Newell's bill, rep'g roof, &c., of same	76 70	
	For cash paid do., steps, &c., to house in Locust alley	7	
	For cash paid R. D. Mitchell, bill for painting house on Mayo st	40 00	
19.	For cash paid gas-bill, on house west side Locust alley, in arrears $206, by compromise.	30	
25 Octo. 30.	For cash paid Stanley's bill, paving in front house, Mayo st	14 35	
Nov. 13.	For cash paid repairing kitchen to house, Locust alley	2	
For 7½ per cent. coms. on $328.16, rents collected as above		24 61	
			270 86

Balance to your credit, 13th Nov., 1869, subject to draft..... $57 30

LEE & GODDIN.

RICHMOND, 13th Nov., 1869.

And at another day, to wit, at a circuit court of the city of Richmond, held in the court-house in said city, on the 10th day of November, 1865:

RICHARD D. JAMES, EXECUTOR AND LEGATEE of Hector Davis, deceased, plt., against WILLIAM S. CROUCH, AND ANN, HIS WIFE; John E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon Crouch, and Columbia Crouch, the last two infants; Thomas J. Rutherford, and Jenny, his wife; Sally Davis and Betty Davis, the last two infants; Ann, a free woman of color, and her four children, Jennie, Audubon, Victoria, and Matilda, all non-residents, and the four children infants, defts.

This day came the plaintiff, by counsel, and filed his bill against the defendants; and on his motion, Benjamin Pollard is appointed guardian ad litem of the infant defendants, to defend their interests in this suit; and thereupon, on the further motion of the plaintiff, by counsel, it is ordered that the defendants William S. Crouch, and Ann, his wife, John E. Crouch, Wm. M. Crouch, Thomas D. Crouch, Algernon Crouch, and Columbia Crouch, being previously served with a copy of this order, do appear here on the 15th day of the present month, and show cause why a receiver should not be appointed to take charge of the real estate of Hector Davis, decd., as prayed for in the bill. And process is awarded against the said defendants to answer the said bill, and the cause is ordered to the rules to be then proceeded in and matured for hearing.

A copy. Teste:

BENJA. POLLARD, *Clerk.*

Endorsed: I acknowledge service of the within rule.

JAMES LYONS,
Counsel for Defts.

NOVEMBER 14TH, 1865.

26 *Bill.*

To the honorable John A. Meredith, judge of the circuit court of Richmond.

Richard D. James, executor and legatee of Hector Davis, deceased, respectfully represents that some time in the year 1864 he filed a bill in this honorable court against William S. Crouch, Ann, his wife, and the children of the said Ann, John E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon Crouch, and Columbia Crouch, the last two infants under the age of twenty-one years; Thomas J. Rutherford, and Jennie, his wife, formerly Jennie Davis; Sally Davis, and Bettie Davis, the last two infants under the age of twenty-one; Ann, a free woman of color, and her four children, Jennie, Audubon, Victoria, and Matilda, all of the said children being under age, and, with their mother, non-residents of the commonwealth of Virginia, being residents of Philadelphia. The object of this bill was to have the estate of the said Hector Davis settled up and the debts and legacies paid off under the supervision and direction of the court.

In the then condition of the estate, your orator saw no objection to having the estate settled up at once, and the real property turned over to the residuary legatees, who were Mrs. Ann Crouch and her children. The personal estate of his testator was then valued at $91,020, an amount far more than sufficient, as your orator then thought, to pay off all the debts of which he was advised, and all the legacies, and leave a balance of the personal estate for the residuary legatees. Under these circumstances, he had no objection to turning over the real estate at once to the residuary legatees. Accordingly, without objection on his part, a decree was entered in the said cause on the 25th day of November, 1864, directing that the real estate of the said Hector Davis, deceased, should be delivered up to the said Ann Crouch and her children, and that your orator should pay to her the rents, less the charges and expenses of the said real estate and a commission of seven per cent. for managing said real estate and collecting the rents.

The said decree also directed your orator to render an account of his transactions as executor before one of the commissioners of this court.

On the 23d of December, 1864, another order was entered in the said cause, appointing William F. Watson a special commissioner to settle your orator's accounts. Copies of these decrees are herewith filed. Shortly after this last order, your orator laid his vouchers and papers before Commissioner Watson for the settlement of the account ordered, but owing, as he supposes, to the bad health of Mr. Watson, it seems that he made no progress in the accounts, and your orator found his papers, since Mr. Watson's death, and in obedience to an order recently made by this court has laid them before Commissioner Thomas J. Evans for settlement.

27 Your orator would as promptly have surrendered the real estate to Mrs. Crouch and her children in obedience to the said decree, the whole proceeding being a friendly one between himself and the Crouch's, who are his near kinfolk, but for the fact that he understood that William S. Crouch agreed, before he should be required to do so, that he would execute and deliver to your orator a refunding or indemnifying bond. This bond not being given, your orator retained posses-

sion of the property, and no demand was made for it of your orator until since the surrender of Richmond.

It is true that William S. Crouch did come to Richmond some time in February or March, as well as your orator remembers, for the purpose of taking possession of the real estate ordered to be delivered by the decree of November 25th, 1864, but Mr. Pollard being sick, and the papers of the cause not accessible, your orator understood the bond could not be given, and he did not deliver up the real estate.

Some time after the evacuation, the possession of the said real estate was demanded of your orator, but the condition of the estate of his decedent had been then so materially changed that he declined to deliver up the possession of the real estate. Some time afterwards, proceedings were instituted by the said Crouch's in your honorable court to compel your orator to comply with the said decree of November 25, 1864, and deliver to them the possession of the real estate of Hector Davis, decd., the papers in which proceeding are asked to be considered as an exhibit with this bill. Your orator will further state that the papers in the said suit have all been destroyed except the decrees which were entered in the order-books, all of which decrees are here referred to and made exhibits with this bill.

Your orator will now state that at the time the said bill was filed, the personal estate of his testator, besides debts due to him, was valued at $91,020.00, as will appear by the appraisement, a copy of which is here filed. The special legacies given by the will of Hector Davis, a copy of which is here filed, amounted to only $40,000. Your orator, before the fall of Richmond, had reason to suppose, also, that the debts due to his testator would be sufficient to pay off the debts due from him. It will thus appear that before the fall of Richmond and the failure of the southern confederacy, your orator had every reason to believe that the personal assetts in his hands would be more than sufficient to pay off all the debts and special legacies and leave a surplus and the whole of the real estate to the residuary legatees. After the fall of Richmond, the face of matters was wholly changed; nearly the whole of the personal estate of his testator was destroyed by that terrible blow--$67,980.00 of bank-stock, $1,600 of confederate bonds, $14,550 of slave-property, making in all $84,130.00, were rendered, as your orator believes, utterly worthless; $3,000 of Virginia State bonds are now worth about $1,000 only; the stock of the R. V. R. R., $100, of the Va. Life Insurance
28 Co., $360, are, as he is informed, utterly worthless; the bond of the city of Richmond for $1,000 is worth about $650.00, the furniture, which was valued in confederate money at $430, is now worth, as your orator thinks, about $100; making the whole available personal estate (other than debts due testator) about $1,750. With regard to the debts due to his testator, your orator is, at this time, unable to form any conjecture of their amount, or what will be realized from them. They consist in many cases of unsettled accounts and of debts contracted in confederate money, and most of the debtors reside out of Virginia in the Southern and Southwestern States. He made every effort in his power to ascertain something of the solvency of the debtors and their residence, but in most of the cases he has not been able to ascertain anything at all satisfactory upon the subject. He can only say that he has not been able to collect one dollar of these debts since the fall of Richmond. With regard to the debts due from his testator, your orator is equally in the dark, owing to the unsettled state of the country. When he filed his answer to the rule made against him by the Crouch's on the 30 of September last, he supposed the indebtedness would amount to between

five and ten thousand dollars. He has also heard that claims against the estate were held by parties in Philadelphia, and also by the estate of his late partner in Richmond, D. M. Pulliam. These claims are unsettled, and your orator does not know their amount. He had large transactions in the Southern States, and whether he is indebted there or not, your orator does not know. Your orator is advised that the residuary legatees under the will of Hector Davis are entitled to nothing of his personal or real estate until the debts and special legacies are paid. The special legacies amount to $40,000.00. To pay these legacies, there is only $1,750 of personal estate left. Your orator omitted to mention in its proper place that he had received from dividends of stocks, rents of real estate, sale of negroes, and some collections of debts, some thirty-odd thousand dollars, which he invested, in conformity to the order of the court, in bonds of the Confederate States, nominally amounting to some forty thousand and odd dollars, which he now holds. These bonds, of course, are utterly worthless. Your orator is advised that these legacies are chargeable upon the real estate, and must be paid before "whatever balance the testator may be worth" can be ascertained, and "given" to Mrs. Crouch and her children. Your orator is further advised that the intention of the testator that his real estate should be charged with the special legacies is sufficiently clearly indicated in his will; for he directs that such balance that he may be worth shall be given to his residuary legatees, and it is obvious that he intended that such balance should be ascertained before anything should be given to them.

Your orator will not state that the real estate under the jurisdiction of the court is wholly inadequate to pay off the special legacies. A list of the whole of the real estate is herewith filed and prayed to be taken as part of this bill. The real estate being clearly
29 chargeable with their payment, and being the only fund that can now be looked to for that purpose and being also inadequate for the purpose, your orator is advised that it should be impounded and the rents, issues, and profits thereof applied to the payment of the said legacies, or that it should at once be sold and applied to the payment of the said debt and legacies. At all events, he is advised that the said real estate ought not, under existing circumstances, to be turned over to the residuary legatees, who, as such, can have no claim whatever thereto until it is ascertained that such real estate is the "balance of what the testator is worth" after paying debts and special legacies. Your orator is therefore advised that the order entered in this cause on the 25 of November last, requiring him to deliver to the said residuary legatees the real estate of his testator should be rescinded, and the said real estate should be committed to a receiver, to be held and rented out until the further order of the court in relation thereto; and the rents, issues, and profits thereof be held as a part of the fund applicable to the payment of debts and legacies.

Your orator could not pay off the debts and legacies with the funds in his hands prior to the evacuation of the city, because the creditors and legatees would not receive the confederate currency; and as he could not convert the personal estate into any other currency, or invest it in any funds more certain than those in which it was already invested by the testator himself, your orator was advised that he should permit it to remain as the testator left it.

Your orator further states that being unable after the evacuation of the city of Richmond to settle with the special legatees because of the utter destruction of nearly all the assets, and considering that they were entitled in the mean time to the interest on their said legacies, and that

such of them as were infants and orphans (the nieces of the testator and the woman Ann and her children) had an especial claim for their support at least, your orator regarded it as his duty to provide for them out of the rents of the real estate, which was the only fund available to him for that purpose. Upon this statement of facts, showing as it does the confusion and embarrassments attending the administration of the estate of the testator, your orator is advised that he has the right to ask the interposition and aid of this court; that it should take under its control and supervision the whole estate, real and personal, of the testator, and dispose of the same and the rents, issues, and profits thereof in the manner and order prescribed by the testator himself.

To this end, your orator prays that the said William S. Crouch, and Ann, his wife; John E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon Crouch, and Columbia Crouch, the last two infants; Thomas J. Rutherford, and Jennie, his wife; Sally Davis and Betty Davis, the last two infants; Ann, a free woman of color, and her four children, Jennie, Audubon, Victoria, and Matilda, all non-residents, and the four children (infants) may be made parties to this bill, and the adult parties required to answer the same on oath; that guardians may be assigned to defend the infants, and publication made as to the non-resident defendants, as required by law; that this court would rescind the order made in this cause on the 25 day of November last, so far as it required your orator to deliver the real estate of the testator to the residuary legatees, and to account to them for the rents; that this court would appoint a receiver to take charge of the real estate of the said testator, and would take upon itself the supervision and direction of the administration of his estate, and make all orders and direct all accounts necessary and proper for that purpose, and do all other things and make all such other orders and decrees necessary for the protection and enforcement of the rights of all parties interested, and for the full relief and protection of the rights of your orator, as legatee and executor of the said Hector Davis.

R. D. JAMES.

STATE OF VIRGINIA,
City of Richmond, to wit:

I, Andrew Johnston, a notary public for the city and State aforesaid, do certify that on this day R. D. James, whose name is signed to the foregoing bill, personally appeared before me in the said city and made oath that the matters therein stated are true, to the best of his knowledge, information, and belief.

Given under my hand this 9th day of November, A. D. 1865.

ANDREW JOHNSTON,
Not. Pub.

[5-cent rev. stamp.]

Exhibit filed with bill.

List of real estate of Hector Davis, decd.

House and lot on Locust alley, (west side,) valued on the commr.'s books	3,260 00
House and lot on same alley, (east side,) do. do	3,300 00
House and lot on same alley, (east side,) do. do	2,100 00
	$8,660 00

House and lot on Mayo street, (claimed by N. M. Lee as his property,) valued at 5,175 00
House and lot on Church Hill, Henrico County, which the executor supposes to be worth 1,500 00
An interest in land in Chesterfield, which has been injured by the Army, the wood being burnt off it. The executor cannot form any idea of its value, but supposes it to be worth not more than 2,000 00
including an interest in some vacant lots in Manchester.

$17,335 00

31 There is also one-half interest in a tract of land in Arkansas, which the executor knows very little about, but knows that it is very sickly, and supposes it to be not very valuable.

Subpœna.

The commonwealth of Virginia to the sheriff of the county of Goochland, greeting:

You are hereby commanded to summon William S. Crouch, and Ann, his wife; John E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon Crouch, and Columbia Crouch, the last two infants; Thomas J. Rutherford, and Jenny, his wife; Sally Davis and Betty Davis, the last two infants; Ann, a free woman of color, and her four children, Jenny, Audubon, Victoria, and Matilda, all non-residents, and the four children infants, to appear at the clerk's office of our circuit court of the city of Richmond, at rules to be holden for the said court on the first Monday in December next, to answer a bill in chancery exhibited against them in our said court by Richard D. James, executor and legatee of Hector Davis, deceased, and have then and there this writ.

Witness, Benjamin Pollard, clerk of our said court, at Richmond, the 11th day of November, 1865, and in the 90th year of the commonwealth.

BENJA. POLLARD.

Return.

A copy of the within was delivered to William S. Crouch and to John E. Crouch on the 20th day of November, 1865; and a like copy was delivered to Ann Crouch, wife of said William S. Crouch, and to William M. Crouch, and to Thomas D. Crouch, on the 22d day of November, 1865. And a copy of the within was delivered to Thomas J. Rutherford and Jenny, his wife, on the 21st day of November, 1865.

C. R. WOODSON, *D. S.*,
For A. M. HAMILTON, *Shff., G. C.*

And at another day, to wit, at rules held in the clerk's office of the said court on the 6th day of December, 1865, came the defendants, William S. Crouch, and Ann Crouch and her children, and the infant defendants, Jenny, Audubon, Victoria, and Matilda, by Benjamin Pollard, their guardian ad litem, and filed their answers, to which answers the plaintiff replied generally, which answers are in the words and figures following, to wit:

Answer of William S. Crouch.

The answer of William S. Crouch to a bill exhibited against himself and others in the circuit court of Richmond, by R. D. James, executor and legatee of Hector Davis, deceased.

32 This respondent, saving and reserving, &c., for answer to the said bill, answers and says that he knows not why he is made a party to this suit, as he is not a devisee in the will; he has read, however, and refers to and adopts the answer of his codefendants, and adopts it as his own; but again especially denies that he ever promised to give the complt. a refunding-bond.

WM. S. CROUCH.

CITY OF RICHMOND, *to wit:*

I, P. C. Nicholas, a notary public for the city aforesaid, in the State of Virginia, do certify that Wm. S. Crouch, whose name is signed to the answer hereto annexed, this day personally appeared before me and acknowledged the same, and made oath that the statements therein contained are true.

Given under my hand this 15th day of November, 1865.

P. C. NICHOLAS, *N. P.*

Answer of infant defendants.

The answer of Algernon Crouch and Columbia Crouch, Sally Davis and Betty Davis, and Jenny, Audubon, Victoria, and Matilda, children of Ann, a free woman of color, infants under the age of twenty-one years, by Benjamin Pollard, their guardian ad litem, to a bill of complaint exhibited against them and others in the circuit court of the city of Richmond, by Richard D. James, executor and legatee of Hector Davis, deceased.

These respondents, saving and reserving to themselves all benefit of exception to the said bill, for answer thereto, say that, being infants and incapable of understanding the matters in controversy in this suit, they submit their rights and interests in the premises to the care and protection of the court.

THE INFANT DEFENDANTS
Above named,
By BENJA. POLLARD,
Their Guardian ad litem.

Answer of Ann Crouch and her children, John E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon Crouch, and Columbia Crouch.

The answer of Ann Crouch and her children, John E. Crouch, William M. Crouch, Thomas D. Crouch, Algernon Crouch, and Columbia Crouch, the two last of whom are infants, to a bill exhibited against them in the circuit court of Richmond by R. D. James, executor and legatee of Hector Davis.

33 These respondents, saving and reserving to themselves all benefit of exception to the said bill, for answer to so much thereof as

they are advised it is material for them to answer, answer and say that they know not what was the nature of the bill first filed by the complt. They, through William S. Crouch, the husband of this respondent Ann, and the father of her children, employed eminent counsel in Richmond immediately after the death of Hector Davis to establish their rights and procure for them the property to which they are entitled under the will of the said Hector Davis, being themselves unable to act directly, and in fact ignorant of their rights, and they have been informed that the bill of the complt. was filed by that counsel.

These respondents are advised and insist that, by the will of Hector Davis, they are entitled to his real estate without liability for his debts, or the pecuniary legacies bequeathed by his will, because he has not charged the said real estate with the payment of other debts or legacies; on the contrary, it is manifest from his will and the condition of his estate that the testotor supposed his estate was ample to pay his debts and the said legacies, and leave a balance for these respondents. He was an intelligent, successful business man, and president of a bank in Richmond, and if he had intended to subject his real estate to sale for the payment of legacies, he would have empowered some person to sell it instead of leaving it as he did. He would not have directed money to be paid and invested, manifestly contemplated prompt investment, if he knew or believed that there was no fund for the purpose, without resort to the real estate, without authorizing the ex'or to sell the real estate. And these respondents are advised that the intention of the testator must control and determine the question. But whether the real estate be liable for the payments of the debts and legacies or not, these respondents are advised that the complt. has no right to the custody of it, and to them alone the custody of it belongs, and they claim it, and the detention of it by the complt. since the death of the testator was a clear wrong and tort, all the consequences of which must fall upon him. That he had no right or authority to rent it out, and if he did so, and received confederate money for it, he must bear the loss of it, and account to these respondents for the use and occupation of it at its fair value in good money.

As to the allegation that these respondents did not apply for possession of the said property until the month of February or March last, it is incor'ect, because their counsel was instructed to obtain possession long before, and these respondents are informed that when they became also the counsel for the complt., (under a mistake,) they advised him to deliver it up, because he had no right to hold it.

These respondents also, upon the information of William S. Crouch, deny that he ever agreed to give the complt. a refunding-bond for the real estate. He certainly was never authorized by them to do so.

34 These respondents insist that the complainant has been guilty of gross maladministration of the estate, for which he is personally responsible, and so are his securities, in this among other things:

First. The pecuniary legacies in the said will were payable in the currency of Virginia at the death of the testator, and it was his duty to pay them.

Secondly. He was directed by the will to invest $20,000 in State stock, and it was his duty to do so, and he is liable to all the loss resulting from his failure to do so, and there was no decree of the court forbid'ing him to do so.

Thirdly. The testator having indicated his preference for State stock as an investment, it was his duty to have invested in that stock when authorized by this court to do so.

Fourthly. That as to his own legacy the investment in confederate bonds is to be considered as his own act also, like the act of any other individual disposing of his own property, and he is responsible for the loss of it.

Fifthly. That as to the slaves sold, they were bequeathed to these respondents, and were illegally sold by the complt., and he is responsible, and must account for their value.

Sixthly. Because the complainant failed to obtain of this honorable court, or any other competent court, any decree or order directing how the legacies should be paid.

Finally, these respondents insist that they are entitled to the custody of the real estate, that there is no necessity for any other receiver, and upon the case as now presented this honorable court has no lawful right or authority to appoint one.

ANN W. CROUCH.

CITY OF RICHMOND, *to wit:*

I, P. C. Nicholas, a notary public for the city aforesaid, in the State of Virginia, do certify that Mrs. Ann W. Crouch, whose name is signed to the answer hereto annexed, this day personally appeared before me, and acknowledged the same, and made oath that the statements therein contained are true.

Given under my hand this 15th day of Nov., 1865.

P. C. NICHOLAS, *N. P.*

And at another day, to wit, at rules held in the clerk's office of the circuit court of the city of Richmond, on the 6th day of December, 1865:

RICHARD D. JAMES, EXECUTOR AND LEGATEE of Hector Davis, deceased, plt.,
against
ANN, A FREE WOMAN OF COLOR, AND HER FOUR children, Jenny, Audubon, Victoria, and Matilda, and other, defts.

35 The object of this suit is to have an order made in a suit between the same parties, so far as it requires the plaintiff to deliver the real estate of his testator to the residuary legatees and to account to them for the rents rescinded, to have a receiver appointed to take charge of the said real estate, and to have the whole of the estate of the said testator settled up and distributed among those entitled thereto.

And affidavit having been made and filed that the defendants above named are not residents of this State, the said defendants are required to appear within one month after due publication hereof, and do what is necessary to protect their interests in this suit.

A copy. Teste:

BENJ. POLLARD, *Clerk.*

Endorsed.

CITY OF RICHMOND, *to wit:*

I, J. H. Sands, a notary public in and for the said city, in the State of Virginia, do hereby certify that Benjamin Pollard this day person-

ally appeared before me in the city aforesaid, and made oath that on the 11th day of December, 1865, he posted a copy of the within at the front door of the court-house of the said city.

Given under my hand this 7th day of March, 1866.

J. H. SANDS, *N. P.*

Report of Commissioner Thomas J. Evans, of 18th February, 1868, with exhibits, filed March 5th, 1868.

VIRGINIA.

In the circuit court of the city of Richmond, October 6th, 1865.

R. D. JAMES, IN HIS OWN RIGHT, AND AS EXecutor of Hector Davis, deceased, pltff.,
against
WILLIAM S. CROUCH AND ANN, HIS WIFE, JOHN E. Crouch, and other, defts.

On the motion of the plaintiff, by counsel, and for reasons appearing to the court, it is ordered that the decree entered in this cause on the 3d day of December, 1864, be set aside; and on further motion of the plaintiff by counsel, it is ordered that R. D. James, executor of Hector Davis, deceased, do render an account of his transactions as executor as aforesaid, before one of the commissioners of this court, who is directed to audit, state, and settle the same, and that said commis-
36 sioner take an account of all the assetts belonging to said estate, and of all claims due by the same, giving notice by publication in some newspaper published in the city of Richmond, once a week for four successive weeks, for all persons to prove their claims before him, which publication shall be equivalent to personal service of notice upon all parties, and that the said commissioner report his proceedings herein, for a further decree, with any matters specially stated, deemed pertinent by himself or which may be required by any of the parties to be so stated.

A copy. Teste:

BENJ. POLLARD, *Clerk.*

COMMISSIONER'S OFFICE,
Richmond, February 18th, 1868.

In the circuit court of the city of Richmond.

DAVIS' EX'OR, &C.,
v.
CROUCH AND ALS.

Pursuant to the decree entered in this cause on the 6th of October, 1865, and at the instance of the counsel for all the parties, on the 13th of October, 1865, I issued a notice fixing on Wednesday the 15th day of November, 1865, at 9 o'clk. a. m., as the time, and my office as the place, to take the accounts ordered by the said decree.

This notice was published once a week for four successive weeks, in the Richmond Whig, one of the newspapers published in the city of Richmond, the evidence of which publication is herewith returned, in the certificate of J. C. Shields, editor of the Whig.

On the day appointed, R. D. James, executor of Hector Davis, deceased, Andrew Johnson, esq., counsel for the plaintiffs, and James

Lyons, esq., counsel for the defendants, appeared at my office, and filed sundry papers, which are herewith returned.

The same parties and counsel attended at my office on several other days, and filed several other papers, which are herewith returned. I also took the depositions of several witnesses, which depositions are also herewith returned. The case was adjourned, and continued from day to day and from time to time till this day, and now I report the following accounts and statements, marked "A," "B," "C, "D," "E," "F, and "G."

A is an account of the transactions of R. D. James, executor of Hector Davis, deceased, from the date of his qualification to the 3d of April, 1865, in Confederate States currency, showing a balance due from the said executor to the estate of Hector Davis, deceased, on the 3d day of April, 1865 of ($14,135.62) fourteen thousand one hundred and thirty-five dollars and sixty-two cents, of which the sum of $13,823.12 is principal and the sum of $312.50 is interest.

The account is supported by proper vouchers and the depositions of witnesses. This balance of $14,135.62 is due from the executor in currency of the Confederate States, and is not commuted into
37 United States currency, nor is it carried into the account B, because the question in regard thereto can be more clearly presented to, and be considered by, the court by keeping these two accounts in different currencies separate and distinct.

B is an account of the transactions of R. D. James, executor of Hector Davis, deceased, from the 3d day of April, 1865, to the 18th day of February, 1868, showing a balance due on the last-mentioned day from the executor, in currency of the United States, of ($14,188.54) fourteen thousand one hundred and eighty-eight dollars and fifty-four cents, of which the sum of $13,484.72 is principal and the sum of $703.82 is interest. Every item in this account is supported by a proper voucher, except three, and these three are marked thus, ×. One is for 70 cts. for revenue-stamps; one for $28 expenses of the executor, and the other for $10 for services of R. D. James; and to the correctness of these three items the executor made oath before me.

C is an account reported specially and at the instance of James Lyons, esq., counsel for the defendants. In this account the receipts and disbursements embraced in account A are commuted into gold or United States currency in each month, as received and paid out. Thus treating the receipts and disbursements, this account shows a balance due from the executor to the estate on the 3d day of April, 1865, in United States currency, of ($4,232.88) four thousand two hundred and thirty-two dollars and eighty-eight cents, of which the sum of $3,992.88 is principal and the sum of $240 is interest.

This account embraces the sum of $33,508.82 commuted into $1,411.39 of United States currency, paid by the executorr of $39,100 of confederate bonds under orders of court. Mr. Lyons, for the defendants, insists that this should not be charged to the estate, and so, at his instance, I report the statement marked " D."

D shows the state of the account, if the investments in confederate bonds be left out, showing a balance due from the executor to the estate on the 3d of April, 1865, in United States currency—

Principal	5,404 27
Interest	240 00
	$5,644 27

E is an account of all assetts belonging to the estate of Hector Davis, deceased.

F is an account of claims due by the estate of Hector Davis, deceased.

G is an account of the payments made by the executor to the freed servant woman, Ann Davis, as directed by the will of Hector Davis, deceased.

These payments are also charged in the account B, and are reported thus separately and specially to show how much of the annuity has been paid.

Respectfully reported.

THOS. J. EVANS, *Comr.*

38 A.

Dr. *The estate of Hector Davis, deceased,*

1863.			
Janu'y	15.	To cash paid for clothing for Wm. Isham, a slave belonging to the estate of testator. See B. W. Elmore's depositions, page 14, question 18	20 00
		To cash paid Cowardin & Hammersley for advertising notice to claimants in the Richmond Dispatch, per bill and receipt, No. 2. See, also, B. W. Elmore's deposition, page 3, question 12	6 25
	20.	To cash paid draft of Francis Rowle, on account of money deposited with testator by Rowle. See draft No. 3 and B. W. Elmore's deposition, page 3, ques. 11	129 25
		To cash paid John C. Page, jr., for shoes purchased by testator in his life-time, per bill and receipt, No. 4, and B. W. Elmore's deposition, page 3, ques. 10	48 25
	24.	To cash paid Richmond Enquirer for advertising due by testator, per bill and receipt, No. 5. See, also, B. W. Elmore's deposition, page 13, question 16	12 00
	27.	To W. H. Bowcock (through Lee & James) for expenses, &c., to go to Arkansas to protect and preserve property there belonging to testator's estate, per receipt No. 6. See, also, B. W. Elmore's deposition, page 2, question 9; page 7, question 6; page 8, questions 7 and 8	1,000 00
Feb'uary	4.	To cash paid Wm. Irby for horse-hire, per bill and receipt No. 7. See, also, B. W. Elmore's deposition, page 2, question 8	40 00
		Amount carried forward	$1,255 75

40 A—Continued.

1863.			
Feb.	4.	To amount brought forward	$1,255 75
	11.	To cash paid Wirt Roberts for coal, per bill and receipt No. 8. See, also, B. W. Elmore's deposition, page 2, question 7.	30 00
	21.	To cash paid city hospital for charges, coffin, grave, &c., for slave John, belonging to testator, per bill and receipt No. 9. See, also, B. W. Elmore's deposition, page 2, question 6.	23 75
		To cash paid Dr. R. G. Cabell for medical bill due by testator, per bill and receipt No. 10. See, also, B. W. Elmore's deposition, page 2, question 5	37 00
Mch.	2.	To cash paid W. Gilliam, (through Lee & James,) in full for the net proceeds of sale of slave Tom, made on his account by H. Davis, per receipt No. 12. See, also, B. W. Elmore's deposition, page 5, question 19	1,312 10
	9.	To cash paid David McDaniel, (through Lee & James,) for wood bought by Hector Davis during his life, per receipt No. 13	400 00
	16.	To cash paid Ettenger for bringing trade to the auction-house of Hector Davis, No. 14. See B. W. Elmore's deposition, p. 13, question 18	20 00
	17.	To cash paid Dr. J. H. Conway, medical services due by testator, per bill and receipt No. 15. See, also, B. W. Elmore's deposition, page 1, question 3	25 00
	20.	To cash paid Jno. D. Quarles for brick-work done for testator, per bill and receipt No. 16. See, also, B. W. Elmore's deposition, page 1, question 2	89 00
1863.			
Feb.	25.	To cash paid Richmond City, gas-bill, per bill and receipt No. 11. See, also, B. W. Elmore's deposition, page 2, question 4	8 10
		Amount carried forward	$3,200 70

39 A.

In account with R. D. James, executor. *Cr.*

1863.				
Jan'y	17.	By cash from safe		550 00
		By " "		11 00
		By " from N. Frederick		4,172 70
		By " from safe		390 00
		By " "		107 25
		By " "		100 00
		By " "		30 00
Feb'ry	2.	By " " 600 lbs. bacon, at 75c		450 00
		By " from George D. Pace		8,433 00
		By " " int. on confederate bonds		22 60
	3.	By " " H. Meinhard & Bro		35 50
	5.	By " " Jno. O. Christmas		2,000 00
	12.	By " " J. R. Sedgwick		1,663 00
	17.	By " " Thos. R. Price & Co		51 00
		By " " David McDaniel		4,830 10
	20.	By " " Hire		100 00
		By " " Bank of Petersburg, div'd		225 00
March	6.	By " " D. S. Gray		3,134 00
	9.	By " " David McDaniel		300 00
	20.	By " " Wm. S. Rogers		14,512 00
April	1.	By " " J. E. Carson		1,385 65
	8.	By " " J. M. Haden		444 67
	11.	By " " Hire of Eliza		25 00
	15.	By " " J. O. George		35 50
	22.	By " " Harris & Echols, for note		186 38
		By " " interest on same		36 09
	23.	By " " R. F. Wilson		180 00
	25.	By " " David McDaniel		5,000 00
May	1.	By " " John Belvin		8 00
	5.	By " " W. W. Jones, for his note		1,275 00
	12.	By " " Dr. H. F. Jones		2,365 14
	20.	By " " Charles E. Kent		13 75
		Amount carried forward		$52,072 33

41 A—Continued.

1863.				
May	20.	By amount brought forward		52,072 33
	28.	By cash from J. E. Tanner		420 48
June	18.	By " W. Hopkins		1,745 09
	24.	By " D. S. Gray		1,402 12
		By " Wm. A. Puryear		818 54
July	2.	By " Traders' Bank, dividend		3,470 00
	4.	By " John J. Whitehurst		2,025 10
	13.	By " Bank city of Petersburg		150 00
	25.	By " George W. Johnston		1,417 38
	30.	By " J. A. Michie		340 00
Aug.	12.	By " J. R. Sedgwick		707 60
	20.	By " J. J. Gills		1,140 70
Sept.	23.	By " Ramie, for rent		430 00
	25.	By " J. J. Whitehurst		500 00
Octo.	2.	By " Farmers' Bank, dividend		927 00
Nov'r	12.	By " Hire of Roberta		24 00
Dec'r	23.	By " Farmers' Bank, dividend		2,500 00
	30.	By " Cash		1,110 00
	31.	By " Hire of Joe		500 00
		By " Rent of jail		1,000 00
		By " Hire of Polly		100 00
		By " H. Davis & Co., being ½ of profits of business toH. Davis from 1st to 7th of Jan., 1863, the date of Hector Davis' death		971 32
1864.				
Jan'y	9.	By " dividend		5,205 00
Feb'y	3.	By cash from dividend		175 00
	9.	" " " Bolling's hire		125 00
	13.	" " " hire of		100 00
	15.	" " " hires		210 00
Mch.	8.	" " " David McDaniel		8,092 42
	8.	" " " " "		13,154 73
	10.	" " " hires		116 50
		Amount carried forward		$100,950 31

42 A—Continued.

1863.			
Mch.	20.	To amount brought forward	3,200 70
	23.	To cash paid Miles George, for rent due by the testator per receipt No. 17. See B. W. Dlmore's deposition, page 1, question 1	24 19
April	1.	To cash paid P. S. Dawson, (through Lee and James,) in full for balance of nett sales of all negroes sold by Hector Davis on account of P. S. Dawson per receipt No. 18. See, also, B. W. Elmore's deposition, page 5, question 19..	7,476 40
		" " 24, " 1 and 2.	
	3.	To cash paid Joseph Stern, (through Lee and James,) in full for balance due on due-bill of 26th Dec'r, 1863, for $3,500 and all other transactions of all descriptions per receipt No. 19. See, also, B. W. Elmore's deposition, page 5, question 19, and page 24, questions 3 & 4	2,210 31
	7.	To Andrew Johnson, atty. at law, fee for professional services, per receipt No. 20	25 00
	15.	To cash paid Isaac P. Davis, (through Lee and James,) in full for the nett sales of two negro slaves, named Joshua and Charity, with interest thereon to date, per receipt No. 21. See, also, B. W. Elmore's deposition, page 5, question 19	2,591 40
	18.	To cash paid James M. Fenbee, (through Lee & James,) in full for the hire collected for servant Major for 1860 and '61, after deducting commissions, per receipt No. 22. See, also, B. W. Elmore's deposition, page 5, question 19	290 00
		Amount carried forward	$15,818 00

44 A—Continued.

1863.			
April	18.	To amount brought forward	15,818 00
	18.	To cash paid Dr. Cabell for medical services per bill and receipt No. 23. See, also, B. W. Elmore's deposition, page 3, answer to 13th question	108 00
	20.	To cash paid John J. Mitchell the balance due him by Hector Davis on settlement of account with ex'or. See B. W. Elmore's answer to 19th question, on pages 13 and 14 of deposition	68 63
	25.	To cash paid on half of negotiable note for $5,000, endorsed with R. H. Davis for the accommodation of J. W. Wells. See, also, B. W. Elmore's answers to 21st question on page 5, and to 11 and 12 questions, page 8 of depositions	2,500 00
May	6.	To cash paid M. A. Myers for negro clothing, due by testator, per bill and receipt No. 26. See, also, B. W. Elmore's answer to 14th question, page 4 of the depositions	2 75
	12.	To cash paid protest on H. F. Jones' note, per note and protest No. 27. See, also, B. W. Elmore's answer to 18th question on page 13 of the depositions	2 60
		To cash paid Jos. G. Bossieux, expenses to Petersburg to collect H. F. Jones' note. See deposition of Elmore, answer to 18th question, page 13	47 30
		To cash paid John A. Belvin, funeral expenses of testator, per bill and receipt No. 29	207 00
	22.	To cash paid Mutual Assurance Society, quota for 1863, on buildings, per rec't No. 30	25 30
		To cash paid for boots for slave William Isham. See Elmore's deposition, page 13, ques. 18, No. 31	8 00
		Amount carried forward	18,787 58

43 A—Continued.

1864. Mch.	10. By amount brought forward		100,950 31

By amount carried forward $100,950 31

45 A—Continued.

1864. Mch.	10. By amount brought forward		$100,950 31

By amount carried forward 100,950 31

46 A—Continued.

1863.			
May	22. To amount brought forward		$18,787 58
	To amount deposited (through Lee and James) in Traders' Bank to meet overdraft of Hector Davis:		
	Principal	$13,656 89	
	Interest	268 59	
	Note of H. Davis	10,000 00	
	Interest	173 34	
			24,098 82
	See certificate of John C. Davis, teller of the bank, No. 39, and B. W. Elmore's deposition, page 6, and answer to 22nd question.		
	25. To cash paid Jno. W. Lipscomb for hauling wood for testator, per bill and receipt No. 32		10 80
	30. To amount deposited in Traders' Bank to meet a check of Hector Davis, given in his life-time to C. P. McCandlish, which had not been presented when his bank-book was written up. See B. W. Elmore's answer to 22d question on page 6 of the deposition and certificate No. 39		132 00
June	1. To cash paid George W. Parker, (through Lee and James,) balance in full of nett proceeds sales of negro slave Ella made on his account by H. Davis, per receipt No. 3.4. See, also, B. W. Elmore's deposition, page 5, answer to 19th question		884 00
	Amount carried forward		43,913 20

48 A—Continued.

1863.			
June	1. To amount brought forward		$43,913 20
	13. To cash paid express company, expenses of slave Susan (belonging to estate) from Tennessee to Richmond. See B. W. Elmore's deposition, page 13, answer to 18th question.		40 00
	19. To cash paid Alexander Sims, bonding claim against Gill's receipt, No. 36		30 00
	26. To cash paid Richmond city, taxes for 1863, per receipt No. 37		240 40
	27. To cash paid Major F. Rawle, balance due him on account of money deposited by him with H. Davis. See B. W. Elmore's deposition, page 12, answer to 17 question		70 12
Aug.	7. To cash paid W. B. Pettit, (through Lee & James,) in full of account, per receipt No. 40. See, also, B. W. Elmore's deposition, page 5, answer to 19th question		220 00
	To cash paid State taxes for 1863, per rec't No. 41		255 37
	To cash paid com'r revenue, per rec't No. 42		75
	To cash paid John B. Davis, in full of all accounts to this day, pr. receipt No. 43. See, also, B. W. Elmore's deposition, page 5, answer to 19th question		907 50
	17. To cash paid John A. Hutcheson, adm'r of A. B. Hutcheson, dec'd, in full account to this day, pr. receipt No. 44. See, also, B. W. Elmore's deposition, page 5, answer to 19th question		37 50
	To amount carried forward		$45,713 84

47 A—Continued.

1861. Mch.	10.	By amount brought forward	$100,950 31

By amount carried forward $100,950 31

49 A—Continued.

1864. Mar.	10.	By amount brought forward	$100,950 31

By amount carried forward $100,950 31

50 A—Continued.

1863.			
Aug.	17.	To amount brought forward	$45,713 84
Oct'r	1.	To amount deposited in Traders' Bank to balance the account of H. Davis. See certificate of John C. Davis, teller bank, No. 39, and B. W. Elmore's deposition, page 6, and answer to the 29th question	117 00
	20.	To cash paid Fire and Marine Insurance Company for insurance, three bills, $7.20, $9, $5, per receipt No. 46	21 20
Dec.	24.	To cash paid R. T. Lacy, (through Lee & James,) the balance in full of net sales of two negro slaves named Kit and William, made in his account by Hector Davis, per receipt No. 47. See, also, the deposition of B. W. Elmore, page 5, and answer to 19th question	751 00
	12.	To cash paid sheriff of Henrico County, tax-bill. See B. W. Elmore's deposition *deposition*, page 13, answer to 18th question	13 70
1864.			
Jan.	1.	To cash paid Hector Davis & Co., (through Lee & James,) balance due them for payments made to them for Hector Davis, after deducting amounts received by them for H. Davis, per statement marked X X. Elmore's deposition, page 25, questions 5 and 6, and the vouchers therewith filed	7,841 28
		To amount carried forward	54,458 02

52 A—Continued.

1864.			
Jan'y	1.	To amount brought forward	$54,458 02
	20.	To cash paid John W. Starke (through Lee & James) for one-half of the cost of a negro slave named Molly, paid for by Starke, and bot. jointly for himself and H. Davis, per receipt No. 50. See, also, B. W. Elmore's deposition, page 5, and the answer to the 19th question	400 00
	27.	To cash paid Nance & Williams, attorneys' fee, per receipt No. 51	500 00
Feb.	15.	To cash paid C. J. Sinton, collector, Confederate States income tax for 1863, per receipt No. 52	316 25
Mch.	5.	To cash paid sheriff of Chesterfield County, taxes for 1863, per receipt No. 53	10 06
	8.	To cash paid Dr. R. G. Cabell, medical bill, per receipt No. 54	70 00
	12.	To commissions on $100,950.31 at 5 p. ct	5,047 51
		To amount to balance	40,148 47
			$100,950 31

To cash paid for the following bonds of the Confederate States, the investments being made under orders of the circuit court, city of Richmond, of 20th Feb., 1864, &c.:

Apl.	13.	To No. 6137, seven per cent., for $8,000	8,000 00
		Premium on same	776 88
	19.	To 6158, seven per cent., for $1,400	1,400 00
		Interest on same	29 67
	29.	To No. 1372, six per cent., for $3,600	3,600 00
		Premium and interest on same	59 06
July	27.	To No. 1459, six per cent., for $11,800	8,260 00
		To No. 68, eight per cent., for $2,000	1,700 00
		To amount carried forward	$23,825 61

51 A—Continued.

1864.			
Mar.	10.	By amount brought forward	$100,950 31

		By amount carried forward	$100,950 31

53 A—Continued.

1864.			
Mch.	10.	By amount brought forward	$100,950 31
			$100,950 31
Mch.	12.	By balance, per contra, due from the executor to the estate.	40,148 47
Apl.	16.	By cash of Va. Life Ins. Co., dividend	59 04
June	13.	By cash, hire of Bertie	10 00
	20.	By " "	15 00
July	26.	By " "	70 00
		By " of Wm. M. Cabell	400 00
		By " of " interest	92 00
Aug.	17.	By " of R. D. Shields, jr	10 00
Decr.	1.	By " for dividends	4,650 33
		By " of Ramie for rent from 1st Oct	400 00
		By " net proceeds of sale of slave Roberta	4,604 00

		By amount carried forward	$50,459 84

54 A—Continued.

1864.				
July	27.	To amount brought forward		$23,825 61
		No.	$1,500	1,050 00
Nov.	12.	No. 6239, seven per cent., for	$4,500	
		No. 6240, "	$1,300	
		No. 6541, "	$1,000	
		No. 6242, "	$2,000	
		No. 6243, "	$1,700	
		No. 6244, "	$100	
		No. 6245, "	$2,000	
				8,633 21
Mch.	18.	To cash paid D. McDaniels for wood, due by testator, per receipt and bill No. 62		62 50
	23.	To cash paid B. W. Elmore for services, and amount due J. D. Burke, per receipt No. 67. See, also, B. W. Elmore's deposition, page 5, answer to 20th question, and James E. Goddin's deposition, page 10, answer to 4th question, page 25, questions 7 and 8		2,375 31
June	11.	To cash paid hospital of the Medical College for medical services, &c., to slave Burtie, belonging to the estate, per bill and receipt No. 63. See, also, Jas. E. Goddin's deposition, page 9, answer to 2d question		290 00
	16.	To cash paid Richmond Whig (two bills) for advertising court orders, per receipt No. 64		36 00
	30.	To cash paid Mutual Assurance Society, quota for 1864, per bill and receipt No. 66. See, also, the deposition of James E. Goddin, page 10, answer to 3d question		8 04
July	12.	Richmond City taxes for 1864, per receipt No. 65		172 43
		Amount carried forward		$36,453 10

56 A—Continued.

1864.			
July	12.	To amount carried forward	$36,453 10
Aug.	15.	To cash paid W. H. Given, in full of balance due, per receipt No. 68. See, also, James E. Goddin's deposition, page 10, answer to 5th question	7,180 85
	25.	To cash paid A. H. Houchins for building fence and repairing top of house, per bill and receipt No. 69. See, also, James E. Goddin's deposition, page 10, answer to 6th question, and Elmore's deposition, page 26, questions 9 and 10	300 00
Sept.	9.	To cash paid charges of protest on notes of Gardner and of Luckett	3 60
	29.	To cash paid for truss for slave Joe. See deposition of James E. Goddin, page 10, answer to 7th question	20 00
Oct.	26.	To cash paid Virginia Fire and Marine Insurance Company for insurance, three policies. See James E. Goddin's deposition, page 11, answer to 8th question	32 00
Nov.	12.	To cash paid H. W. Montgomery, it being to his credit on the books of Hector Davis. See James E. Goddin's deposition 11, answer to 9th question	162 25
	26.	To cash paid C. J. Sinton, collector of Confederate States oldiers' pay, and coin taxes for 1864, per rec't No. 74. See James E. Goddin's deposition, page 11, answer to 10th question	543 60
Dec'r	7.	To cash paid R. T. Seal, police officer, for arresting slave Roberta. See James E. Goddin's deposition, page 11, answer to 10th question	5 00
		Amount carried forward	$44,710 40

55 A—Continued.

1864.			
Dec'r	1.	To amount brought forward	$50,459 84
	22.	By cash of Wm. Isham for his hire	20 00
1865.			
Jan'y	7.	By cash of hires of Joe Harris and William Isham, at $300 each, for the year 1864	600 00
		By cash for rent of jail on Locust alley for year 1864	1,500 00
		By cash for hire of Eliza and children $75	
		Less doctor's bills 15	
			60 00
Feb'y	1.	By cash for hire of Bolling	400 00
Mch.	17.	By cash for nett sales of woman Polly and boy John	2,707 00
		By cash of Wm. Isham for his hire	50 00
		By cash for advertising the above negroes, Polly and John, and for medicines, &c., charged estate	38 00
Jan.	15.	By cash on account of dividends and interest on Confederate States bonds	3,919 00
Mch.	17.	By amount carried forward	$59,753 84

57 A—Continued.

1865.			
Mch.	17.	By amount brought forward	$59,753 84

By amount carried forward $59,753 84

58 A—Concluded.

1864.				
Dec'r	7.	To amount brought forward	$44,710 40	
	16.	To cash paid sheriff of Henrico County, taxes for 1864, per bill and receipt No. 76	12 00	
1865.				
Feb'y	4.	To cash paid Richmond Whig for advertising notice of Commissioner W. F. Watson to take accounts, per receipt No. 77	32 00	
	1.	To cash paid N. C. Miller, clerk of Goochland circuit & county court, fee-bills, (three,) per receipt No. 78	3 05	
		To cash paid for board and clothing of slave Sue, belonging to the estate. See James E. Goddin's deposition, page 11, answer to 10th question	125 00	
Mch.	11.	To cash paid for advertising and medicine for slave John, belonging to the estate. See Jas. E. Goddin's deposition, page 11, answer to 10th question	38 00	
		To cash paid Richmond Dispatch for advertising slaves for sale, two bills, per bills and receipts No. 81	30 00	
	17.	To commissions on $19,605.37 at 5 per cent	980 27	
April	3.	To amount to balance	13,823 12	312 50
			$59,573 84	312 50

60 B.

Dr. The estate of Hector Davis, deceased, in account with R. D. James, ex'or. Cr.

1865.			
		To cash paid Ann Davis, on the 3d of Mch., 1864, for the support of her four children, per receipt No. 81½	250 00
		To interest on the same to 12th March, '66	30 37
Apl.	20.	To cash paid Ann Davis for the sustenance and support of her four children, per receipt No. 82	20 00
May	20.	To cash paid Ann Davis for the sustenance and support of her 4 children, per receipt No. 83	45 00
Sep.	18.	To cash paid Ann Davis for the sustenance and support of her 4 children, per receipt No. 84	50 00
Nov.	28.	To cash paid Thos. J. Evans, commissioner, in part of fee for settling these accounts, per receipt No. 85	50 00
	29.	To cash paid Andrew Johnston, attorney's fees, per receipt No. 86	100 00
		To cash paid Andrew Johnston, amount of writ tax, clerk's fees, &c., paid by him per receipt No. 87	5 60
Dec'r	2.	To cash paid Steger and Sands, attorney's fees, per receipt No. 88	100 00
		To cash paid Richmond City taxes for 1865, per receipt No. 89	138 35
		To cash paid sheriff of Henrico County, taxes for 1865, per receipt No. 90	4 80
		To cash paid sheriff Goochland County, fee bill, per receipt No. 91	3 50
		To cash paid sheriff of the city of Richmond, Va., State taxes for the year 1865, per receipt No. 92	27 67
	20.	To cash paid Ann Davis for the sustenance and support of her four children, per receipt No. 93	50 00
		Amount carried forward	875 29

59 A.—Concluded.

1865.			
Mch.	17. By amount brought forward	59,753 84	
April	3. By interest on $5,000 part of the foregoing balance of $40,145.47, one year and 16 days		312 50
		59,753 84	312 50

	Principal.	Interest.
By balance per contra due from the executor to the estate of Hector Davis, deceased, in the currency of the Confederate States	$13,823 12	312 50

61 B.

1866.		
April	3. By cash received of rents of houses from 3d April, 1865, to 3d April, 1866	1,680 00
	By amount carried forward	$1,680 00

62 B—Continued.

1865.			
Dec.	20.	To amount brought forward	$875 29
1866.			
Jan.	23.	To cash paid Ann Davis for the sustenance and support of her four children, per receipt No. 94	50 00
Feb.	10.	To cash paid Ann Davis for the sustenance and support of her four children, per receipt No. 95	50 00
	27.	To cash paid Richmond Whig for advertising court order, per receipt No. 96	9 00
		To cash paid Richmond Whig for advertising commissioner's notice, per receipt No 97	20 00
	28.	To cash remitted by Southern Express Company to F. Rawle and others, at New Orleans, for , per receipt 98	50 00
		To cash paid Southern Express Company, freight on the $50, per receipt No. 99	75
April	1.	To cash paid the guardian of Sallie and Bettie Davis in part of balance due from Hector Davis, their late guardian, per settled account, per receipt No. 100	800 00
	3.	To commissions on $1,680, the amount received for rents, at 7½ per cent	126 00
			$1,981 04
		To balance per contra carried forward	301 04

64 B—Continued.

1865.			
Apl.	5.	To balance brought forward	$301 04
		To cash paid United States direct tax, per receipt No. 101	23 92
	25.	To cash paid United States direct tax, per receipt No. 102	3 30
	28.	To cash paid R. Maynard for topping two chimneys on the house on Locust alley, per receipt No. 103	40 00
May	1.	To James A. Tucker, for repairing roof of same house, per receipt No. 104	15 00
		To cash paid Benja. Pollard, clerk of Richmond circuit court, eight fee-bills, per receipts No. 105	45 87
	1.	To cash paid Ann Davis, for the sustenance and support of her four children, per receipt No. 106	75 00
June	9.	To cash paid Ann Davis, for the sustenance and support of her four children, per receipt No. 107	25 00
		To cash paid Ann Davis, for the sustenance and support of her four children, per receipt No. 108	50 00
July	3.	To cash paid Ann Davis, for the sustenance and support of her four children, per receipt No. 109	25 00
	5.	To cash paid Benja. Pollard, clerk, for tax on seal, &c., per receipt No. 110	50
	23.	To cash paid Bright & Co., for supply-pipe at house No. 4, Locust alley, per receipt No. 111	47 00
	27.	To cash paid Ann Davis, for the sustenance and support of her four children, per receipt No. 112	50 00
	29.	To cash paid James C. Mitchell, for two panels of fence, gate, &c., at house on Locust alley, per rect. No. 113	12 50
		To cash paid Mitchell & Weidenham, for repairing floor and steps, per receipt No. 114	10 00
		To amount carried forward	$724 13

63 B—Continued.

1866.			
April	3. By amount brought forward		$1,680 00
	By amount to balance		301 04
			$1,981 04

65 B—Continued.

1866.			
Apl.	13. By cash of R. H. Maury & Co., proceeds of sale of city of Richmond stock, $200, at 71	$142 00	
	" $100, at 71½	712 50	
		$854 50	
	Less their commissions, &c	6 85	
			$847 65
	By amount carried forward		$847 65

66 B—Continued.

1866.		
	To amount brought forward	$724 13
Aug.	25. To cash paid, remitted by Southern Express Company to Galloway, Owen & McC., at Pine Bluff, for attorney's fee, per receipt No. 115	20 00
	To cash paid freight on same, per receipt No. 116	1 00
	27. To cash paid Ann Davis for the sustenance and support of her four children, per receipt No. 117	25 00
Sept.	15. To cash paid James E. Goddin for posting books of Hector Davis, per receipt No. 118	75 00
	28. To cash paid Ann Davis for the sustenance and support of her four children, and for the payment of taxes, water-rents, &c., on her place of residence, per receipt No. 119	155 00
Oct'r	2. To cash paid Richmond City taxes for the year 1866, per receipt No. 120	166 02
Nov.	10. To cash paid clerk of Nelson circuit court, fee-bills, per receipts No. 121	1 43
	To cash paid Richmond Water-Works for water-rent, delinquent by tenant, per recp't No. 122	6 30
Dec.	18. To cash paid Ann Davis for support, per receipt No. 123	50 00
1867.		
Jan'y	5. To cash paid Ann Davis for support, per receipt No. 124	50 00
	15. To cash paid Benja. Pollard, clerk, fee-bills, per receipts No. 125	6 57
Feb.	11. To cash paid Ann Davis for support, —— No. 126	100 00
	20. To cash paid for telegram to Galloway, Owen & McCracken, atty's at law, at Pine Bluff, per receipt No. 127	7 75
	27. To cash for stamping due-bill of W. J. Shumate	70
	To amount carried forward	$1,388 90

68 B—Continued.

1867.		
	To amount brought forward	$1,388 90
Mch.	1. To cash paid sheriff of Richmond City, State taxes for 1866, per receipt No. 128	19 36
	11. To cash paid Ann Davis for support, per receipt No. 129	75 00
April	3. To interest on $301.04 one year	18 06
	To commissions on $14,476.82, at 5 per ct	723 84
	To commissions on $1,248, at 7½ per ct	93 60
	To amount to balance	13,406 06
		$15,724 82

67 B—Continued.

1866.		
	By amount brought forward	$847 65
Sept.	15. By cash received from sale of $175 in gold, at $1.45	253 75
	$45 in silver, at—	60 75
	27. By remittance of McMurdo & Rawles, nett proceeds collected by them of Jos. Briard's bond	7,354 67
Dec'r	. By cash of Henry N. Jones, surviving partner of Matthews & Jones	2,960 00
1867.		
Jan.	15. By cash of Henry N. Jones, surviving partner of Matthews & Jones	3,000 00
	By amount carried forward	$14,476 82

69 B—Continued.

1867.		
	By amount brought forward	14,476 82
April	3. By nett amount of rents collected from 3d April, 1866, to 3d April, 1867	1,248 00
		15,724 82
	By balance, per contra, carried forward	13,406 06

70 B—Continued.

1867.			
Ap'l.	22. To cash paid Ann Davis for support, per receipt No. 130		50 05
May	15. To cash paid Ann Davis for support, per receipt No. 131		25 00
June	3. To cash paid Ann Davis for support, per receipt 132		50 00
	19. To cash paid J. F. Cullam, not. public, for taking depositions in case of Spears' executor, per receipt No. 133		5 00
	To expenses, &c., going to Washington to attend to the taking of the deposition of J. M. Tompkins in the case of Spears' executor		28 00
	24. To cash paid city of Richmond one-half of taxes for 1867, per receipt No. 134		74 71
May	11. To cash paid Wm. L. McMinn for repairs to house, per receipt No. 135		38 50
	27. To cash paid Wm. L. McMinn for repairs to house, per receipt No. 136		15 06
July	5. To cash paid Ann Davis for support, per receipt No. 137		50 00
	18. To cash paid Andrew Johnston attorney's fees, per receipt No. 138		70 00
	To cash paid Johnston & Williams, attorneys' fee, per receipt No. 139		30 00
Aug.	3. To cash paid clerk of Augusta circuit court fee-bill, per receipt No. 140		2 56
	To cash paid sheriff of Henrico County State taxes for 1866, per receipt No. 141		3 19
	29. To cash paid John W. Liggon for repairs to house on Locust alley, occupied by Lizzie Winn, per receipt No. 142		10 00
Sept.	15. To services rendered by executor in partitioning property belonging to Pulliam & Davis		10 00
	19. To cash paid Ann Davis per receipt No. 143		29 50
	To amount carried forward		$491 52

72 B—Concluded.

1867.			
	To amount brought forward	491 52	
Dec.	30. To cash paid Richmond City last half of taxes for 1867, per rect. No. 144	74 71	
	To cash paid sheriff of Richmond State taxes for 1867, per receipt No. 145	41 51	
	To cash paid clerk of Richmond hustings court fee-bill, per rect. No. 146	2 46	
	To cash paid sheriff of Richmond City fee-bill, per acct. No. 147	2 00	
	To cash paid William L. McMinn repairs to house on Locust alley, per receipt No. 148	62 25	
	To cash paid R. Maynard for repairs to same house, per receipt No. 149	10 00	
Nov.	11. To cash remitted to Ann Davis by So. Ex. Co., per receipt No. 150	25 00	
	To cash paid freight on same, per receipt No. 150	1 00	
1868.			
Jan.	15. To cash remitted to Ann Davis, per receipt No. 152	26 00	
	20. To cash paid Jas. E. Phillips & Co. for gutter, &c., per receipt No. 153	11 10	
Feb'y	5. To cash paid J. M. Tompkins expenses from Washington to Richmond to testify as witness, per receipt No. 154	25 00	
	18. To commissions on $114, at 5 per ct	5 70	
1867.			
Dec.	13. To cash remitted to Anna Davis by So. Ex. Co., per receipt No. 151	25 00	
	To cash paid freight, per receipt No. 151	1 00	
1868.			
Feb.	18. To commissions on $831.25, at 7½ per cent	62 34	
	To amount to balance	13,484 72	703 82
		14,351 31	703 82

71 B—Continued.

1867.			
April	3.	By balance brought forward	13,406 06
July	15.	By interest on State bonds	57 00
1868.			
Jan'y	6.	By " "	57 00
		By nett amount of rents collected from 3d April, 1867, to 1 Jan'y 1868	831 25
		By amount carried forward	$14,351 31

73 B—Concluded.

1868				
		By amount brought forward	14,351 31	
Feb.	1st.	By interest, 10 months and 15 days, to date, in foregoing balance of $13,406.06		703 82
			14,351 31	703 82
		By balance, per contra, due from the executor to the estate, in gold or United States currency	$13,484 72	703 82

74 C.

DR. *The estate of Hector Davis, dec'd, in account with R. D. James, executor.* CR.

(Commuting the confederate money each month into gold, or United States currency.)

Reported specially at the instance of James Lyons, esq.

1863.		Confederate.	U. S.
Jan'y.	To payments this month (3 for one)	1,215 75	405 25
Feb.	To " " (4 ")	138 85	34 71
Mar.	To " " (5 ")	1,870 29	374 06
April.	To " " (5½ ")	15,269 74	2,776 32
May.	To " " (5½ ")	435 75	79 23
June.	To " " (7⅓ ")	1,264 52	168 60
July.	To " " (5½ ")	24,098 82	4,381 60
Aug.	To " " (12½ ")	1,420 12	113 61
Oct.	To " " (14 ")	138 20	9 87
Dec.	To " " (19 ")	764 70	40 25
1864.			
Jan'y.	To payments this month (20¼ ")	8,741 28	432 74
Feb.	To " " (23⅛ ")	316 35	13 34
Mar.	To " " (23¾ ")	80 06	3 38
	To commissions	5,047 51	752 42
	To amount to balance	40,148 47	5,463 05
		100,950 31	15,048 43
Mar.	To payments this month (23⅜ to one)	2,437 81	102 64
April.	To " " (22½ ")	13,865 61	616 25
June.	To " " (18 ")	334 04	18 55
July.	To " " (21½ ")	11,182 43	520 11
Aug.	To " " (23¾ ")	7,480 85	314 98
Sept.	To " " (25 ")	23 60	94
Oct.	To " " (26½ ")	32 00	1 20
Nov.	To " " (30⅓ ")	9,349 06	306 52
Dec.	To " " (41 ")	17 00	41
1865.			
Feb.	To payments this month (55 ")	160 05	2 91
Mar.	To " " (60 ")	68 00	1 13
	To commissions on $437.33		21 86
3.	To amount to balance		4,232 88
			6,140 38

75 C.

1863.		Confederate.	U. S.
Jan'y.	By receipts this month (3 for one)	5,360 95	1,786 98
Feb.	By " " (4 ")	17,810 20	4,452 55
Mar.	By " " (5 ")	17,946 00	3,539 20
Ap.& May.	By " " (5½ ")	11,375 66	2,068 30
June.	By " " (7⅓ ")	3,965 75	528 77
July.	By " " (9 ")	7,402 48	822 49
Aug.	By " " (12½ ")	1,848 30	147 87
Sept.	By " " (12½ ")	930 00	74 40
Oct.	By " " (14 ")	927 00	66 21
Nov.	By " " (16 ")	24 00	1 50
Dec.	By " " (19 ")	6,181 32	325 33
1864.			
Jan'y.	By " " (20¼ ")	5,205 00	257 67
Feb. & Mar.	By " " (22⅜ ")	21,973 65	927 16
		100,950 31	15,048 43
Mar.	By balance, per contra		5,463 05
April.	By receipts this month (22½ for one)	50 04	2 62

June.	By " " (18 ")		26 00		1 44
July.	By " " (21½ ")		562 00		26 14
Aug.	By " " (23¾ ")		10 00		42
Dec.	By " " (41 ")		9,674 33		235 96
1865.					
Jan'y.	By receipts this month, (52 for one)		6,079 00		116 90
Feb.	By " " (55 ")		400 00		7 27
Mar.	By " " (60 ")		2,795 00		46 58
April.	By interest on $5,463.05, (averaged)				240 00
					6,140 38
April.	By balance, per contra—principal		3,892 88		
	U. S. currency, interest		240 00		
					4,232 88

Due from the executor to the estate in gold or U. S. cur'cy.

76

D.

[Reported specially at the instance of James Lyons, esq., p. q.]

1865.	Principal.	Interest.
By bal'ce bro'ht from the ac't C	3,992 88	240 00
This balance is the result of the account C, which account embraces the debits to the estate of $33,508.82, in confederate money, worth at the time in United States currency $1,411.39, which the executor, under orders of the court, invested in bonds of the Confederate States. If this investment be wrong, and the debits be wrong, then the foregoing balace will be increased by the sum of	1,411 39	
In gold or United States currency	$5,404 27	$240 00

E.

An account of all assetts belonging to the estate of Hector Davis, deceased.

347 shares	Traders' Bank stock	0 00	worthless.
103 "	Farmers'	0 00	"
10 "	Exchange	0 00	"
75 "	Comm'wth	0 00	"
25 "	Bank of the City of Petersburg stock	0 00	"
1 "	Roanoke Valley Railroap stock	0 00	"
3 "	of stock of Va. Life Insurance Co	0 00	"
Bonds of the Confederate States, $41,800.00		0 00	"
Draft at sight on Walsh, Smith & Co., Mobile, Alabama, drawn by T. G. Banks, and endorsed by L. P. Gordon, dated March 16th, 1860, for		600 00	"
Draft of Edward C. Morton on W. Cox & Co., New Orleans, La., dated March 24th, 1860, and payable twelve months after date		3,780 00	"
77 The executors has received notice of bankruptcy.			
Draft of W. H. Lindsey on Phelps & Jones, New Orleans, Louisiana, dated March 27, 1860, and payable on the 20th of February, 1861, for		$1,000 00	unknown.
Draft of G. W. Manderville on Cammock & Squires, New Orleans, Louisiana, dated August 16th, 1861, for $25 in confederate money		22 73	worthless.
Draft of Ernest and Vedall, dated September 13th, 1861, on H. B. Bennevall, New Orleans, for $15.00 in confederate money, worth, in U. S. currency		13 64	"

Draft of J. M. Mollow on Slaughter, Smith & Shotwell, New Orleans, dated September 22d, 1860, and payable 30 days after date, for.....	1,142	63	unknown.
Carried forward.....	$6,559	00	

E—Continued.

Brought forward.....	$6,559	00	
Note of J. L. Guyel for.....	50	00	worthless.
The foregoing drafts and notes are in the hands of MacMurdo & Rawles, of New Orleans, for collection.			
Note of Francis E. Luckett, endorsed by Henry T. Drewry, dated July 20th, 1861, and payable four months after date in confederate money, $325 worth.....	296	36	good.
Note of John F. Davis, dated April 20th, 1861, payable 60 days after date, for	50	00	good.
Note of Grafton Gardner, dated September 15th, 1860, payable 4 months after date, for.....	1,377	90	worthless.
Bond of John C. Reese, with interest from 12th Jan'y, 1860, which was put into the hands of Wm. Wirt Henry, attorney at law for Charlotte County, for collection by suit or otherwise on 4th Feb'y, 1861	866	66	doubtful.
78 Bond of G. M. Loflan, July 29th, 1861, for $206.75 in confederate money, worth...	187	87	unknown.
Bond of G. N. Calleston, July 29th, 1861, for $206.75 in confederate money, worth.....	187	87	unknown.
Note of Edward Herndon, dated 11th of August, 1860, and payable 110 days after date, and endorsed by H. N. Templeman, for.....	800	00	worthless.
Carried forward.....	$10,375	66	

E—Continued.

Brought forward.....	10,375	66	
Note of Lew Jones, dated 5th July, 1861, payable 3 months after date, for..... $759 67			
On which was paid 19 Nov., 1861..... 500 00			
Leaving a balance due of $259 67			
in confederate money, worth	225	80	doubtful.
Note of M. Sterling Smith, dated January 19th, 1861, endorsed by Susanna M. Smith, and payable 4 months after date, for..... $217 40			
Credited by the sum of..... 100 00			
	117	40	worthless.
Bond of M. B. Grady, dated July 23, 1860, for..	1,522	38	unknown.
Due-bill of N. H. Murphy, dated 23d August, 1861, for $137.80 in confederate money, worth.	125	27	doubtful.
Due-bill of A. J. Homesby, dated 27th of May, 1860, for.....	35	35	worthless.
Due-bill of W. J. Shumate, dated 13th of January, 1863, for $4,000, confed. money, worth....	1,333	33	good.

Due-bill of J. J.Whitehurst, dated October 18th, 1865, for	207	00	probably good.
Note of Jas. H. Spears, 14th Feb'y, 1861, for	276	00	unknown.
Note of Southerland & Coleman, dated 4th October, 1861, for $1,399.40, confederate money, worth	1,272	18	worthless.
Carried forward	$15,490	37	

79 E—Continued.

Brought forward	15,490	37	
Due-bill of Rob't Simpson, dated 26th Feby, 1863, for $253.75 in confederate money, worth	63	44	unknown.
Draft of J. D. Fondren & Bro., on themselves, at New Orleans, dated Nov'r 3d, 1860, payable 20 days after date, for $2,000 00 Entitled to credit 24 Jan'y, 1861 1,207 00	793	00	probably good.
One-third interest in a due-bill of George D. Pace, dated Jan'y 7th, 1863, for $1,000 in confederate money, worth	111	11	probably good.
	$16,457	92	

The following is a list of balances due by open account, taken from the books of Hector Davis. The executor states that many of these debtors are scattered all over the Southern States—many of them and their residences are unknown to him, and he believes that most of these accounts will be unavailing:

Frederick Sheffer, June 2, 1862, confed., $100.00.			good.
Capt. Wm. P. Davis, June 18, 1861, confed., $935,60	850	54	doubtful.
Lee & Bowman, Jan'y 7, 1865, confed., $6, 624.23	126	18	doubtful.
Geo. R. Sledge, April 29, 1861	18	30	unknown.
James Miller, " 26, "	7	20	worthless.
Ephraim E. Grigg, " " "	6	30	worthless.
Carried forward	$17,533	10	

80 E—Continued.

Brought forward	17,533	10	
Ann Banks, Aug. 15, 1864, confederate, $4,796.25	213	17	worthless.
Doctor A. F. Picot, April 16, 1860	20	00	doubtful.
John Gammell, June 18, 1861, confederate, $495.73	450	66	worthless.
Isaac A. Goddin, April 16, 1860	2	25	doubtful.
Jno. C. Page, jr., Jan'y 10, 1862, confederate, $131.61	10	53	doubtful.
B. B. Leatherwood, April 16, 1860	25	00	doubtful.
M. V. Allen, " " "	24	45	doubtful.
W. H. Mosby, " " "	4	10	doubtful.
Tho's T. Hallowell, June 4, "	42	50	doubtful.

N. B. Richardson, April 16, "	14	90	good.
A. J. Farish, " " "	3	02	good.
—— Pitman, " " "	3	50	doubtful.
C. N. Harris, " " "	7	00	doubtful.
John Rucker, " " "	27	30	doubtful.
Dan'l L. Crigler, " " "	1	95	good.
Geo. Davis, " " "	6	80	doubtful.
Geo. W. Cooper	9	00	doubtful.
Jos. J. Daniel	32	50	doubtful.
John Hall, May 11th, 1861, confederate, $168.30	153	00	doubtful.
Allen D. Harn, April 16, 1860	58	70	doubtful.
Rob't Blake, " " "	1	50	doubtful.
Ab'm Shepherd, jr., April 16, 1861	2	10	doubtful.
Mrs. Martha E. Davis " " 1860	100	00	doubtful.
—— Wyatt " " "	9	85	doubtful.
Ro. N. Trice, " 18, "	8	10	good.
J. W. Rosen, " 16, "	1	50	doubtful.
Wm. S. Dupree & Co., June 12, 1861, confederate, $1,287.46	1,170	42	doubtful.
Wills & Davis, June 4, 1860	139	60	doubtful.
Jas. F. Herndon, April 16, 1860	60	00	doubtful.
Sam'l H. Haden, " " "	20	00	doubtful.
Jos. Ligon, June 4, 1860	21	07	doubtful.
J. W. Lawson, April 16, 1860	20	00	doubtful.
I. R. Hill " " "	2	60	doubtful.
Grayson & Gibson, April 16, 1860	4	00	doubtful.
Carried forward	$20,204	17	

E—Continued.

81 Brought forward	20,204	17	
John W. Wells, June 3, 1863, confederate, $956.30	127	50	doubtful.
Hen'y J. Wale, March 1, 1861	97	51	doubtful.
Wm. R. Squires, April 16, 1860	1	33	doubtful.
F. P. Alston, Aug. 7, "	43	30	doubtful.
S. & J. Stern, June 4, "	6	00	good.
Watson & Allen, Novr. 2, "	200	00	doubtful.
Reuben Ragland, April 12, 1861	11	65	good.
A. S. Grigsby, July 1, 1861, confederate, $6,646.19	6,041	19	doubtful.
A. S. Grigsby & Co., April 19, 1861	2,696	06	doubtful.
Clarke & Sedgwick, " 16, 1860	10	30	doubtful.
B. F. Childrey, May 13, 1861, confederate, $25.34	23	04	doubtful.
Lee, Wilson & Co., Sep. 27, 1860	2,584	19	doubtful.
Wm. E. Rose, Apl. 16, "	30	26	doubtful.
Mitchell & Winston, " "	5	03	doubtful.
R. B. Tucker, " "	11	45	doubtful.
Edw. F. Clark, Feb'y 26, 1861	1,297	49	worthless.
W. L. Fleming, April 16, 1860	3	40	good.
L. Chirouze, " "	10	00	doubtful.
B. B. Marshall, " "	5	00	doubtful.
Board & Hirsh, Nov. 3, "	1	25	good.
Jos. H. Crenshaw, April 16, "	6	00	good.
A. Rosenblatt, June 12, 1861, confederate, $100	90	90	doubtful.
Henry Newmann, Dec'r 17, 1862, " 70c		23	good.

Jno. Ireland, " 11, 1860	9	40	doubtful.
J. D. Powers, Novr. 22, 1862, confederate, $2.30		77	doubtful.
John B. Smith, Decr. 24, " " 10		03	good.
Jno. J. Smith & Co., Feb'y 18, '62, " 1.66	1	33	doubtful.
Bowers & McKinney, " " " 1,013.86	811	08	good.
N. H. Massie, Jan'y 10, " " 90		74	good.
Brightwell & Peters, April 16, 1860	8	20	doubtful.
John F. Moses, June 8, "	5	00	doubtful.
John Jenkins, Novr. 6, 1862, confederate, $516.80	172	27	doubtful.
Ro. B. Davis, April 16, 1860	18	00	doubtful.
Wesley King, March 26, 1861	33	41	doubtful.
Carrried forward	34,568	27	

82 E—Continued.

Carried forward	34,568	27	
P. M. Tabb & Son, April 24, 1861	1	50	doubtful.
Peterson & Frederick, " 25, 1860	18	60	doubtful.
Thos. C. Bunting, Jan'y 12, 1861	620	51	doubtful.
S. Stern & Newman, April 5, "	86	05	good.
J. N. Armstrong, " 20, "	19	10	doubtful.
Jno. M. Shelton, Feb'y 14, "	17	75	doubtful.
Barney & House, Nov. 10, 1861	1	50	doubtful.
J. C. Lipford, March 22, 1861	741	80	doubtful.
R. J. Shekell, May 21, 1860	30	00	doubtful.
German Jordan, July 12, 1861, confederate, $18	16	36	doubtful.
Henry Tate, May 21, 1860	150	00	doubtful.
Wm. Goode, jr. " "	10	00	doubtful.
Wm. Kay, " "	5	00	doubtful.
Wm. C. Smith & Co., " "	150	00	doubtful.
Jas. G. Watson, " "	25	00	doubtful.
Geo. Watt & Co., July 12, 1861, confederate, $50	45	45	good.
Jos. L. Harris, June 13, 1860	1	60	doubtful.
Virga. Ann Isham, Decr. 12, 1862, confederate, $1,614.25	538	08	worthless.
W. W. Robertson, July 31, 1860	10	00	doubtful.
W. W. Holden, July 23, "	10	00	doubtful.
B. D. Smith, Aug. 27, "	184	52	doubtful.
J. R. Grigsby, Decr. 8, "	450	00	good.
Dr. A. Jenkins, Nov. 3, "	1	75	doubtful.
J. A. Moseley, " "	5	00	doubtful.
Leonidas Miller, Aug. 22, "	11	75	doubtful.
Judge D. R. Campbell, Decr. 22, 1862, confederate, $145	48	33	doubtful.
James Neville, Aug. 28, 1860	20	00	doubtful.
Mrs. M. B. James, Dec. 12, 1862, confederate, $408.70	136	23	good.
B. H. Shackleford, Nov. 3, 1860	97	40	doubtful.
A. W. Pearce, Dec. 12, 1862, confederate, $1,085.36	361	78	doubtful.
——— Maddox, Sep. 4, 1860	14	65	doubtful.
Carried forward	38,397	98	

83 E—Continued.

Brought forward	38,397	98	
Nath. Burwell, Feb. 13, 1862, confederate, 109.95	87	16	doubtful.
Tho. B Long, Sep. 24, 1860	22	75	doubtful.
Jas. M. Bruce, " 15, "	8	65	doubtful.
Jno. Wm. Ely, " 25, "	36	00	doubtful.
Jno. Poe, jr., April 8, 1861	162	91	doubtful.
Jno. G. Moseby, jr., Sep. 27, 1860	30	00	doubtful.
Jos. G. Boisseaux, June 21, 1861, confederate, 17.95	16	32	doubtful.
Julius Harrison, Oct. 3, 1860	3	25	doubtful.
Robt. Alois, Sept. 23, 1862, confederate, 1,670.00	668	00	good.
Wm. M. E. Waugh, Oct. 12, 1860	22	60	doubtful.
Owens & Miles Son, Apl. 22, 1862, confederate, 4.20	3	00	doubtful.
Mrs. Wrenn, Nov. 3, 1860	5	00	doubtful.
Jno. D. James, (Tenn.,) Feb. 6, 1861	6	00	doubtful.
Edmund Taylor, Feb. 27, 1861	36	70	doubtful.
A. Smith and Co., Oct. 16, 1861, confederate, 2,850.15	2,478	39	doubtful.
Citizens' B'k of La., Jan'y 20, 1861	7	00	doubtful.
C. C. Moore, June 18, 1861, confederate, 153.55	139	59	doubtful.
Josh. Payne, May 28, 1861, confederate, 40		36	doubtful.
Jno. D. James, (Va.,) Feb. 10, 1862, confederate, 167.77	134	21	good.
D. S. Farrar, March 19, 1861	25	45	doubtful.
Fayette Williams, Apl. 30, 1861	14	20	doubtful.
S. M. & R. Bowman, Aug. 23, 1861, confederate, 180.97	164	52	good.
L. C. Pollard, July 13, 1861, confederate, 82	74	53	doubtful.
Wm. A. Branton, Apl. 1, 1862	1	35	doubtful.
Clifford Cabell, May 24, 1861	18	00	doubtful.
L. B. Doggett, Apl. 10 "	33	40	doubtful.
Jno. P. Brock, Jan'y 7, 1862, confederate, 493.45	394	76	doubtful.
—— Pearson, March 30, 1861	5	00	doubtful.
Franklin Matthews, July 12, 1861, confederate, 63.00	57	27	doubtful.
S. Hirsh, Dec. 20, 1861, confederate, 26.18	23	80	doubtful.
Wm. C. Moncure & Co., Feb. 7, 1862, confederate, 41.50	32	20	doubtful.
Carried forward	43,111	35	

84 E—Continued.

Brought forward	43,111	35	
Alex. Pendleton, May 15, 1861	3	27	doubtful.
Benj. Rose, Dec. 15, 1862, confederate, 12.00	4	00	doubtful.
Jno. N. Davis, July 12, 1861, " 25.00	22	73	good.
Geo. S. Stevens, " " " " 40.00	36	36	doubtful.
Jno. A. Hutcheson " " " 1.75	1	60	good.
Augusta A. Quarles, Nov. 17, 1862, confederate, 15.19	5	06	doubtful.
Sam'l. H. Snowden, Nov. 9, 1861, confederate, 1.83	1	58	doubtful.
James Poore, May 8, 1861, confederate, 10	9	09	doubtful.

Richd. D. James, Nov. 26, 1864, confederate, 250.67	8 35	good.
N. M. Lee & Co., March 21, 1863, confederate, 3,839.70	767 94	doubtful.
—— Hubbard, June 18, 1861, confederate, 30.00	27 27	doubtful.
Lieut. Chas. E. Frenner, Apl. 15, 1862, confederate, 115.00	82 14	doubtful.
Jacob Enders, Decr. 5, 1861, confederate, 4.20	3 50	doubtful.
Thos. M. Jones, sr., Octo. 27, 1862, confederate, 895.00	358 00	doubtful.
R. H. Madison, Aug. 25, 1862, confederate, 28.10	18 73	doubtful.
H. H. Baker, Aug. 27, 1862, confederate, 5.00	3 33	doubtful.
Meinhard & Co., Dec. 20, 1862, confederate, 6.50	4 34	doubtful.
Wm. M. Ewers, Octo. 30, 1862, confederate, 6.00	4 00	doubtful.
P. M. Baker, Decem. 5, 1862, confederate, 50	33 33	doubtful.
N. M. Lee, March 21, 1863, confederate, 14,760.12	2,952 02	doubtful.
R. D. James, Jan'y 1st, 1863, confederate, 3,442.09	1,126 21	good.
	48,5 4 20	

85 The following bonds and furniture are in the hands of the executor:

Va. State bonds for $3,900, at 37	$1,443 00	
Five chairs	5 00	
One bedstead, bed and bedding	35 00	
One bedstead	8 00	
One wardrobe	25 00	
Cooking-utensils, &c	8 00	
		1,524 00
Carried forward		$50,108 20

E—Continued.

Amount brought forward		50,108 20

Real estate.

House and lot on Mayo street, Richmond	5,175 00	
" " Locust alley, "	3,300 00	
" " " "	3,260 00	
" " " "	2,100 00	
" " Church Hill, "	600 00	
Lot in Manchester	500 00	
37 acres in Chesterfield	500 00	
		15,435 00
Total assets in gold or United States currency		$65,543 20

There is also claimed by the executors that there is due from the estate of Henry N. Templeman, dec'd, to the estate of Hector Davis, dec'd, a large balance on the settlement of their partnership accounts. This claim, however, is disputed, and is in suit on the chancery side of this court in the case styled Davis' ex'or v. Templeman's adm'or. In this case Davis' ex'or also claims a tract of land in the State of Arkansas,

costing about $8,000, which he says was purchased with the funds of Hector Davis, although the conveyance of the land was made directly to Henry N. Templeman. This land is also in co'troversy in the aforesaid suit.

The ex'or of Davis fu'ther thinks it proper that I should report that he understood Davis, in his life-time, to say that he owned a house and lot in Philadelphia. The executor has recently understood that the title to the said property in Philadelphia is held in the name of Ann Davis, the col'd woman mentioned in Hector Davis's will; further than this the executor knows nothing of the title to the said property in Philadelphia, its location or value.

86 E—Concluded.

Recapitulation of assets.

Debts due to the estate, worthless	10,082 34	
" " " unknown	4,398 49	
" " " doubtful	27,534 21	
" " " probably good	2,444 44	
" " " good	4,124 72	
		48,584 20
Virginia State bonds, &c		1,524 00
Real estate		15,435 00
Total in gold or United States currency		$65,543 20

F.

An account of claims due by the estate of Hector Davis, dec'd.

To Waller L. Holladay and Alex'r R. Holladay, ex'ors of Waller Holladay, dec'd, by bond of Henry Jones with Hector Davis as surety, dated 23d Nov., 1860, payable 1st Jan'y, 1862, with interest from 1st Jan'y, 1862		17,500 00
To Sallie and Bettie Davis from Hector Davis, their late guardian, per last account settled by com'r F. N. Fleming, balance due 1st Jan'y, 1863, of principal $5,269.24, with interest from 1st Jan., 1863		
Subject to a credit on 1st April, 1866	800 00	4,469 24
To R. D. James, his ¼ share of nett profits of commissions on sales due 31st Dec'r, 1862, in confederate money, $9,593.87, worth, interest from the 31st Dec'r, 1862		5,760 13
To Lydia C. Ramson, by open account, with interest from 17th Sept., 1862		240 36
To Washington Crawford for money paid to Ann Davis, Sept. 10, 1862		100 00
January 2, 1863		20 50
To William L. Day, by open account, 17 March, 1862		150 15
Total of claims against the estate due in gold or United States currency		$28,240 38

87 G.

The following payments have been made to Ann Davis under the 2d clause of the testator's will, and are entered in the foregoing account, marked "B."

1864.			
Mch. 3.	To c'h p'd Ann Davis for the supp't of her chil'n..		250 00
1865.			
April 20.	do.	do.	20 00
May 20.	do.	do.	45 00
Sep. 18.	do.	do.	50 00
Dec. 20.	do.	do.	50 00
1866.			
Jan. 23.	do.	do.	50 00
Feb. 10.	do.	do.	50 00
May 1.	do.	do.	75 00
June 9.	do.	do.	25 00
June 9.	do.	do.	50 00
July 3.	do.	do.	25 00
July 27.	do.	do.	50 00
Aug. 27.	do.	do.	25 00
Sep. 28.	do.	do.	155 00
Dec. 18.	do.	do.	50 00
1867.			
Jan'y 5.	do.	do.	50 00
Feb. 11.	do.	do.	100 00
Mch. 11.	do.	do.	75 00
Apl. 22.	do.	do.	50 00
May 10.	do.	do.	25 00
June 3.	do.	do.	50 00
July 5.	do.	do.	50 00
Sep. 19.	do.	do.	29 50
Nov. 11.	do.	do.	25 00
Dec. 13.	do.	do.	25 00
1868.			
Jan. 15.	do.	do.	25 00
			1,474 50

88 Exceptions of Ann Crouch and her children, filed with Commissioner Evans' report.

DAVIS'S EX'R *vs.* CROUCH. } Note for Comm'r Evans.

1. $1,000 p'd Bowcock. The ex'or in Virginia had no control over the estate in Arkansas, and therefore no right to expend money for it, and there is no proof that the agent was — proper one, or the amount necessary, or that it was ever expended for the estate.

2. $7,476.40. There is no proof adequate that this general and lumping charge is correct. The details should be produced.

3. $2,210.31. Proof insufficient. Not shown what the due-bill amounted, what the sum paid on it previously was, and what the "all other transactions of all descriptions" was. The due-bill must be produced.

4. $2,500 paid for J. W. Willis's note. "H. Davis," or "Hector Davis," was the partnership name, and if H. Davis is liable for any part of this debt, he is liable for only one-half of $2,500.

5. $7,841.28. There is no evidence that Hector Davis individually is chargeable with this debt, the entry upon the books of the firm being a charge vs. the firm, and not vs. a member of it only. Many of the receipts, moreover, are dated in the life-time of Hector Davis, and an evidence, therefore, of payments by him, and not by his ex'or; and in this and all similar cases such a charge is excepted to.

6. $8,633.21 invested in confed. bonds. This excepted to, because the testator directed $20,000 to be invested in State stock, and the court had no authority to change the investment, and if it had it did not do it, and because the legatees were bound to receive the money, and it was the duty of the ex'or to pay them, and no investment was necessary or proper, except in State stock.

7. $2,375.31 paid B. W. Elmore and J. D. Burkes. These charges have no connection properly, and should be made saparately, so as to show what is charged to each. As it is, it is impossible to judge of them.

8. $7,180.85. There is no proof of this charge. An entry upon the books of Hector Davis, if made, is no evidence against him, unless it be produced and proved to have been made by himself or his clerk in his life-time, and when he was attending to business. If the entry was made by his partner, that partner must prove the correctness of the entry. Elmore's testimony, as it stands, amounts to nothing. This objection is to be applied to every similar entry.

Mr. James must furnish the comm'r acc'ts of Davis & Co., and the expense-account, so as to show the gross and net comm'ns,
89 and thus show what his share of the profits, as he properly terms them, amounts to. If there was a profit-and-loss-account of sales, it must be produced.

[Returned with commissioner's report.]

The estate of Hector Davis, deceased, to Lydia E. Ramson, Dr.

To balance on settlement January 18th, 1861	18 91
To board and lodging the daughter of dec'd, from January 18, 1861, to Sept. 17, 1862, eighty-six and one-half weeks, at $2.50 per week	216 25
To paid tuition in the Union school four terms, at $3 per term	12 00
To paid tuition for said daughter in select school two terms, at	3 12
To books and clothing furnished	7 48
To cash furnished deceased's daughter, Jennie, for her expenses home	12 50
Total	$270 26

Lydia E. Ramson.

Cr. By cash received of Isaac Davis	$10 00	
" " " " Ann Davis	10 00	
By labor by Jennie Davis	10 00	
	30 00	270 26
		30 00
Balance due		$240 26

Oberlin, Jan. 6, 1866.

STATE OF OHIO, *Lorain County:*

I, Lydia E. Ramson, owner of the above claim against the estate of Hector Davis, deceased, make solemn oath that the same is justly due; that no payments have been made thereon except those above endorsed, and that there are no offsets to the knowledge and belief of affiant.

LYDIA E. RAMSON.

[5 cent stamp.]

Sworn to and subscribed before me this 6th day of January, 1866.

{ NOTARIAL SEAL, LORAIN CO., O. }

W. P. HARRIS,
Notary Public.

90 [Returned with commissioner's report.]

On the 1st day of January, A. D. eighteen hundred and sixty-two, we promise and bind ourselves, our heirs, &c., to pay to Waller L. Holladay and Alexander R. Holladay, executors of Waller Holladay, their heirs, assigns, &c., the just and full sum of seventeen thousand five hundred dollars, good and lawful money of Virginia. As witness our hands and seals this 23d of November, 1860.

$17,500.

H. M. JONES. [SEAL.]
HECTOR DAVIS. [SEAL.]

Teste:
R. D. JAMES as security.

A copy made from the original in the possession of Alexander R. Holladay.

THOS. J. EVANS, *Com'r.*

[Returned with commissioner's report.]

OFFICE OF LANCASTER & CO.,
STOCK AND EXCHANGE BROKERS,
Richmond, Virginia, Nov. 16th, 1865.

R. A. LANCASTER.
P. J. WRIGHT.
J. L. WILLIAMS.

JAMES LYONS, Esq.:

DEAR SIR: We enclose statement of prices obtained by us for Va. State and Traders' Bank stock in 1863 and 1864, which we hope will answer y'r purpose, as we have spent time and pains in preparing it.

Respectfully,

LANCASTER & CO.

Will Messrs. Lancaster & Co. please state in what currency the sales above mentioned were made; whether in confederate treasury notes or what other currency, and the relative values in gold at the times of said sales?

A. JOHNSTON,
For R. D. James, ex'or of H. Davis.

91 *Sales of stock of the State of Virginia and Traders' Bank by Lancaster & Co. in the years* 1863 *and* 1864.

SALES OF VIRGINIA STATE STOCK.

1863.		1864.	
Jan. 27.	108 and int.	Jan'y 5.	Long date, 250 and int.
Feb. 23.	106 "	6.	Short date, 241 "
Mar. 19.	106 "	6.	Past due, 200 "
25.	112 "	Feb. 3.	" 210 "
Apl. 1.	112 "	4.	Long date, 256 "
8–16.	115 "	15.	" 265 "
May 12.	112 "	22.	" 275 "
June 6.	115 "	Mar. 2.	Short date, 194 "
30.	131 "	5.	Long date, 255 "
July 14.	135 "	Ap'l. 1.	After this point the old currency ceased and the new began.
18.	160 "		
25.	175 "		

29. 200 to 210 and int.
Aug. 10. 211 and int.
12. 207 "
Sep. 15. 185 "
Octr. 1. 186 "
30. 210 "
Nov. 2. Short date, 210 & int.
11. Long date, 237½ "
13. Long date, 240 "
Dec. 5. Long date, 258 "
8. Short " 240 "

June 21 to July 21, 155 and int.
Aug. 30. Past due, 157 "
30. Long dates, 170 "
Sept. 2. " 175 "
Dec. 7. " 280 "

(It will be observed that from the fall of 1863 the difference between the prices of past-due and long-date stock ranged from 10 to 40 pr. ct. Previously little or no difference was made in them.)

TRADERS' BANK STOCK.

1863.	1864.
Feb'y 3. 107.	Jan'y 6. 191 and 195.
Sept. 2. 147.	Feb. 8. 190.
Oct. 20. 150.	Feb. 10. 180.
Nov. 25. 188.	Feb. 19. 200.
Dec. 11. 178.	Mar. 7. 161.

The foregoing memoranda are made from sales recorded in our books.

LANCASTER & CO.

92 [Returned with commissioner's report.]

RICHMOND, *Feb'y 4th*, 1868.

GENTLEMEN: Please inform me what the following stocks and bonds are now worth in United States currency:

Traders' Bank stock,	worthless.
Farmers' "	"
Exchange "	"
Comm'th "	"
City of Petersburg Bank stock,	"
Virginia States bonds, (old,)	37
Roanoke Valley Railroad stock,	worthless.
Virginia Life Ins. Co. stock,	"
Richmond City bonds,	55
Confederate States bonds,	worthless.

Very respectfully,

THOS. J. EVANS, *Comr.*

DR. SIR: Above we answer your inquiries.

LANCASTER & CO.

FEB. 7TH, 1868.

[Returned with commissioner's report.]

List of papers belonging to Hector Davis' estate.

Draft at sight on Walsh, Smith & Co., Mobile, Ala., drawn by T. G. Banks and endorsed by J. P. Gordon, dated March 16, 1860, for 600 00

Draft of Edward C. Morton on W. Cox & Co., New Orleans, La., dated March 24, 1860, 12 mos. after date, for 3,780 00
Have rec'd notice of bankruptcy.

Draft of W. H. Lindsey on Phelps & Jones, New Orleans, La., dated March 27, 1860, and payable on 20 Feb., 1861, for 1,000 00

Draft, G. W. Mandeville, on Cannock & Squires, New Orleans, La., dated Aug. 16, 1861, for 25 00
Draft, Ernest Vidal, dated Sept. 13th, 1861, on H. B. Bonneval, New Orleans, for 15 00
Draft of J. M. Morton on Slaughter, Smith & Shotwell, New Orleans, dated Sept. 22, 1860, and payable 30 days after date, for 1,142 63
Note of L. P. Guyol for 50 00
93 The above notes in the hands of McMurdo & Rawles, New Orleans, for collection:
Note of Francis E. Lucketts, endorsed by Henry T. Drewry, dated July 20, 1861, payable 4 mos. after date, for 325 00
Note of John F. Davis's, dated April 20th, 1861, payable 60 days after date, for 50 00
Note of Grafton Gardner's, dated Sep. 14, 1860, payable 4 mos. after date, for 1,377 90
Bond of John C. Reese's for 866 66
with int. from 12 Jan'y, 1860, which was put in the hands of W. H. Henry, atto. at law, for collection by suit or otherwise, on the 4th Feby., 1861.
Two bonds of G. M. Lofland & George N. Catterton, each for. 206 75
Dated July 29, 1861.
Note of Edward Herndon's, dated Aug. 11, 1860, payable 110 days after date, and endorsed by H. N. Templeman, for.. 800 00
Note of Lew Jones, dated July 5, 1861, payable 3 mos. after date for 759 67
upon which $500 was paid on 19th Nov., 1861.
Note of M. Sterling Smith's, dated Jan'y 19, 1861, endorsed by Susanna M. Susanna M. Smith, and papable 4 mos. after date, upon which there is a credit of $100.00 for.... 217 40
Bond of M. B. Grady's, dated July 23, 1860, for..... 1,522 38
Due-bill of N. H. Murphy's, dated Aug't 23, 1861, for 137 80
Due-bill of A. J. Homesby's, dated May 27, 1860, for..... 35 35
Due-bill of W. J. Shumate's for 40 00
in C. S. currency, dated 13th Jan'y, 1863.
Obligation of J. J. Whitehurst, dated 18th Oct., 1865, for.. 207 00
Note of James H. Speare's, dated Feb'y 14, 1861, for..... 276 00
Note of Southerland & Coleman's, dated Oct. 4, 1861, for... 1,399 40
Due-bill of Robert Simpson's, dated Feb'y 26, 1863, for 253 75
Draft of J. D. Fondren & Bro. on themselves, at New Orleans, dated Nov. 3, 1860, payable 20 days after date, for.. 2,000 00
The above parties are entitled to a credit which the books of Hector Davis will show.
One-third interest in due-bill of George D. Pace's for..... 1,000 00
dated Jan'y 7, 1863, in C. S. currency.

94 [Returned with commissioner's report.]

Dr. R. D. James, in account with Hector Davis's estate.

1859.				
Oct.	1.	For cash loaned you	250 00	
Nov.	7.	For cash paid your draft	100 00	
1860.				
Jan'y	2.	For cash loaned you	50 00	
Feb.	22.	For cash paid your draft	25 00	
Apl.	16.	For cash loaned you	75 00	
				500 00
				$500 00
1869.				
June	4.	For balance to your debit this day		500 00
	7.	For cash paid your sight-draft in favor of self	25 00	
July	12.	For cash paid clothing-bill	27 00	
	18.	For cash paid you	2 00	
	27.	For cash sent you by Peter	1 00	
Oct'r	2.	For cash gotten at sundry times	129 00	
	22.	For cash paid P. T. Atkinson, for 3 shares Traders' Bank stock	270 00	
Nov.	14.	For cash loaned you	55 00	
Dec.	20.	For cash paid Dr. R. G. Cabell for 5 shares stock in Traders' bank, @ $87.50	437 50	
	31.	For cash paid John C. Page, jr., amo. your bill shoes, to date	12 75	
		For cash paid Dr. A. S. Grigsby, his bill for medical attention	20 00	
				979 25
	31.	For balance		6,520 75
				$8,000 00
1861.				
Jan.	12.	For cash paid you at sundry times	31 30	
Feb.	27.	For cash paid C. A. Gwatkin's bill	8 54	
Mch.	28.	For cash paid Dr. A. S. Grigsby	1 00	
April	1.	For cash paid your note at Traders' bank	8,000 00	
	20.	For cash paid Dr. R. G. Cabell	2 00	
May	8.	For cash used by you per ticket	387 75	
June	8.	For cash paid your note for my benefit at Traders' bank	600 00	
				14,430 59
		Forward		$14,430 59

96

1861.				
June	2.	For amount forwarded		14,430 59
	12.	For cash paid Thomas Jones for you	7 00	
July	3.	For cash sent you by N. M. Lee	10 00	
		For cash paid for cap	1 50	
	8.	For cash paid your note	7,500 00	
Aug.	10.	For cash paid for overcoat purchased by Lee for you	18 00	
		For cash handed you by Lee	5 00	
Sept.	11.	For cash paid for two flannel shirts	6 00	
	20.	For cash paid for clothes and drawers	4 75	
				7,552 25
				$21,982 84

95

1860.		
June 4.	By balance	500 00
		500 00
1860.		
Dec. 31.	By your note in my favor at 90 days from 29th inst., (accommodation,) discounted at Traders' Bank	8,000 00
		8,000 00
1861.		
Jan'y 1.	By balance	6,520 75
	Forward	6,520 75

97

1861.		
Jn'y 1.	By amount forwarded	6,520 75
Feb. 6.	By your note at 4 months (accommodation) for	6,000 00
April 6.	By your note at 90 days (accommodation) for	7,500 00
Dec. 31.	By balance	1,962 09
		$21,982 84

1862.				
Jan.	1.	For balance		1,962 09
		For cash p'd draft in favor of Hendley Simpson	20 00	
	29.	For cash paid your draft in favor of Thos. J. James	175 00	
April	18.	For cash paid your draft in favor of P. D. Woodson	150 00	
May	12.	For cash paid you on ac't	80 00	
June	13.	For cash sent you by E. Hardy	5 00	
July	12.	For cash paid you, (sent by orderly serg't)	25 04	
	14.	For cash paid John James	20 00	
		For cash paid self	5 00	
	28.	For cash paid self	10 00	
Aug.	16.	For cash paid self	5 00	
Sept.	1.	For cash paid d'ft in favor of Thos. Chandler, on August 14th, for $215, but through mistake paid	250 00	
	8.	For cash paid you to pay for house	320 00	
Nov.	18.	For cash paid your d'ft in favor P. C. Westcott	90 00	
Dec.	12.	For this amount taken out of drawer by Hector Davis, to pay for substitute	1,200 00	
				2,355 00
				$4,317 09

98

[Returned with commissioner's report.]

Dr. R. D. James, in account with Hector Davis' estate.

1859.				
Oct.	1.		250 00	
Nov.	7.		100 00	
1860.				
Jan'y	2.		50 00	
Feb.	22.		25 00	
April	10.		75 00	
			$500 00	
June	4.		500 00	
	7.		25 00	
July	12.		27 00	
	18.		2 00	
	27.		1 00	
Oct.	2.		129 00	
	22.		270 00	
Nov.	14.		55 00	
Dec.	26.		437 50	
	31.		12 75	
	31.		20 00	
	31.		6,520 75	
			8,000 00	
1861.				
Jan.	12.		31 30	31 30
Feb.	27.		8 54	8 54
Mar.	28.		1 00	1 00
Apl.	1.		8,000 00	8,000 00
	20.		2 00	2 00
May	8.		387 75	352 50
June	8.		6,000 00	5,454 54
		Carried over	14,430 59	13,849 88

1862.			
Feb.	11.	By cash of Henry Stern	250 00
Mar.	3.	By draft of N. M. Lee on Christian & Lee	225 00
July	28.	By cash from Capt. Rawles for 1 bay horse	250 00
Dec.	20.	By cash of you	100 00
	31.	By cash of you	50 00
			875 00
	31.	By balance	3,442 09
			$4,317 09
1863.			
Jan'y	1.	For balance	$3,442 09

99

1860.			
June	4.		500 00
			$500 00
Dec.	31.		8,000 00
			$8,000 00
1861.			
Jan.	1.		6,520 75
		Carried over	$6,520 75

100

1861.				
June	8.	Brought over	$14,430 59	$13,849 88
	12.		7 00	6 36
July	3.		10 00	9 09
			1 50	1 41
	8.		7,500 00	6,818 18
Aug.	10.		18 00	16 36
			5 00	4 54
Sept.	11.		6 00	5 45
	26.		4 75	4 32
			$21,982 84	$20,715 59
1862.				
Jan.	1.	Balance	1,962 09	694 84
	4.		20 00	16 00
	29.		175 00	140 00
Apr'l	18.		150 00	107 14
May	12.		80 00	53 33
June	13.		5 00	3 33
July	12.		25 00	16 66
	14.		20 00	13 33
			5 00	3 33
	28.		10 00	6 66
Aug.	16.		5 00	3 33
Sept.	1.		250 00	100 00
	8.		320 00	128 00
Nov.	18.		90 00	30 00
Dec.	12.		1,200 00	400 00
			$4,317 09	$1,715 95
1863.				
Jan.	1.		3,442 09	1,126 21

101

1861.			
Jan. 1.	Brought over	$6,520 75	$6,520 75
Feb. 6.		6,000 00	6,000 00
Apl. 6.		7,500 00	7,500 00
Dec. 31.	Balance	1,962 09	694 84
		$21,982 84	$20,715 59
1862.			
Feb. 11.		250 00	200 00
Mar. 3.		225 00	173 08
July 28.		250 00	166 67
Dec. 24.		100 00	33 33
31.		50 00	16 66
31.	Balance	3,442 09	1,126 21
		$4,317 09	$1,715 95

[*Returned with commissioner's report.*]

Order appointing appraisers, their qualification and the appraisement t already copied; the appraisement at pp. 6, 7; the order and qualification at pp. 9, 10.

[*Returned with commissioner's report.*]

COMMISSIONER'S OFFICE,
Richmond, November 15, 1865.

DAVIS' EX'OR, &C., v. CROUCH & ALS. } In Richmond circuit court.

The depositions of B. W. Elmore and James E. Goddin, taken at the office of Thos. J. Evans, comm'r, to be read as evidence in the suit
102 of James, ex'or of Davis, &c. v. Crouch and others, on the settlement of the accounts, &c., of the executor of Hector Davis, dec'd.

Present, R. D. James, executor, &c.
" Andrew Johnston, counsel for James, ex'or, &c.

B. W. Elmore, being first duly sworn, deposes and says:

1st question by A. Johnston, esq. Look at bill marked "A" and state what you know about it.

Answer. This bill against Lee & Davis, was paid. They were partners; $24.19 of the $250.00 were charged to Hector Davis estate as his

portion of the rent from 23d Decem'r, 1862, to 7th Jan'y, 1863, the day of Mr. Hector Davis' death. The rent was due and the bill is correct, and was paid by George.

2nd question by same. Look at account marked "B" and state what you know about it?

Answer. Seventy-six dollars of this bill of $89.00 is properly chargeable to N. M. Lee & Co., of which Hector Davis was an equal partner—so that Davis' estate is properly chargeable with $38.00.

3d question by same. Look at account marked "C" and state what you know about it?

Answer. Twenty-five dollars of this bill was properly charged to H. Davis' estate and was paid by the executor.

4th question by the same. Look at account marked "D" and state what you know about it?

Answer. Eight dollars and ten cents are properly chargeable to H. Davis' estate. The bill had to be divided because the house in which the gas was furnished changed hands. The amount ($8.10) was paid by the executor.

5th question by the same. Is this bill correct, marked "E"?

Answer. It is and was paid. My impression is, that the amount was to the credit of Dr. Cabell on Davis' books.

6th question by same. Is this account, marked "F," correct or not, and was it paid or not?

Answer. It is correct and was paid.

7th question by same. Is this account for $40.00, marked "G," correct or not, and was it paid or not?

Answer. It is correct. $30.00 of it is properly chargeable to H. Davis' estate and was paid by his executor.

8th question by same. Is this account correct or not, and was it paid; 'tis marked "H?"

Answer. It is correct. It is for horse-hire, hired to send messengers to the friends and family of the deceased informing them of the death of the testator, H. Davis. 'Twas paid by ex'or.

9th question by the same. Will you look at account or bill marked "I" and say what you know about it?

Answer. The money was paid by Mr. James, ex'or of H. Davis, (through Lee & James,) and Mr. Bowcock went to the West
103 to look after the property belonging to the estate. Mr. Davis, before his death, had intended to send Mr. James to the West to attend to the property. Before Mr. James got ready to go Mr. Davis was taken sick and died, and it therefore became necessary to send some one else. There was no white person on the plantation in Arkansas—negroes were there.

10th question by the same. Will you look at account marked "K" and say whether or not it is correct and was paid?

Answer. Mr. Davis was constantly in the habit of buying shoes from Mr. Page for negroes. I am satisfied the bill is correct, and I knew the executor paid it. I found charges against the owners of the negroes for the shoes on the books of Mr. Davis, who was an auctioneer for selling negroes.

11th question by the same. Look at paper marked "L" and state what you know about it.

Answer. Major Rawls was a quartermaster in the Confederate States army, and kept money in the hands of Mr. Davis. At the time the draft for $129.25 was drawn he had credit on Mr. Davis' books for the amount.

I am satisfied it was paid by the executor. I think I paid it for Mr. James, the executor. I was clerk for Mr. Davis and for Mr. James.

12th question by the same. Will you look at bill marked "M" and state whether it is correct or not, and whether or not it was paid?

Answer. It is correct, and was paid ($6.25) by Mr. James, ex'or.

13th question by the same. Look at bill of Dr. Cabell for $108, and marked "N," and say whether or not it is correct, and whether or not it was paid?

Answer. It is correct, and was paid by the executor.

14th question by the same. Will you look at bill marked "N" and state whether or not it is correct, and whether or not it was paid?

Answer. I believe it to be correct, and know it was paid by ex'or.

15th question by the same. Will you look at the receipt of D. Denoon and John T. Mills for $1,568.00, marked "O," and in the receipt-book, and state what you know about it?

Answer. I know the amount was due, as stated in the receipt, and was paid by the ex'or of H. Davis.

16th question by the same. Will you look at receipt of H. Stein for $1,288.70, marked "P," in receipt-book, and state what you know about it?

Answer. I know the amount was due, as stated in the receipt, and was paid by the ex'or of H. Davis.

17th question by the same. Will you look at the receipt of J. Elencullo for $1,000, marked "Q," in receipt-book, and state what you know about it?

Answer. The amount was deposited with H. Davis, as stated in the receipt, and was paid by his executor.

18th question by the same. Will you look at receipt of J. Bright-
104 well for $2,536.00, dated Feb. 21, 1863, and marked "R," in the receipt-book, and state what you know about it?

Answer. There was due from H. Davis' estate $2,526.15, and this amount is included in that receipt, that receipt being given for nett sales of slaves sold, with some little credit deducted, I suppose, which I do not now remember, and the sum of $2,526.15 was paid by Mr. James, the ex'or of H. Davis.

Present, Wm. S. Crouch.

19th question by the same. Will you look at the receipts marked S, T, U, V, W, X, Y, Z, Aa, Ab, and Ac, on the receipt-book of

W. Gilliam, March 2d, 1863, for		$1,312 10
P. S. Dawson, April 1,	"	7,476 40
Joseph Stein, " 3,	"	3,270 31
Isaac P. Davis, " 15,	"	2,591 40
Jas. M. Ferebe, " 18,	"	290 00
Geo. W. Parker, June 1,	"	884 00
W. B. Pettit, August 7,	"	220 00
John B. Davis, " 7,	"	907 50
Jno. A. Hutcherson, admr., Aug. 17, for		37 50
R. T. Lacy, Decem. 24, 1863, for		751 00
Jno. W. Starke, Jan'y 20, 1864, for		404 00

and state what you know about them?

Answer. The amounts, as stated in the several receipts, were due from H. Davis, and were paid by Mr. James, the executor of H. Davis, deceased.

20th question by the same. Will you look at the receipt marked "Ad" and state what you know about it?

Answer. I know all about it. It is correct, and was paid by Mr. James, ex'or of H. Davis, dec'd.

21st question by the same. Do you know anything of a sum of money paid by James, the executor of H. Davis, dec'd, for J. W. Wells? if so, state what you know.

Answer. A short time before the death of Hector Davis, he and Ro. H. Davis endorsed a negotiable note for $7,000, for the accommodation of J. W. Wells; when the note fell due, on the 25th of April, 1863, Wells did not pay the note, and the endorsers had to pay it. Before the note fell due Hector Davis died, and Mr. James, his executor, paid $2,500, one-half of the note. Wells went away from Richmond, and has not returned. The note has been lost or mislaid, or was destroyed by the troops on the evacuation of Richmond, or Ro. A. Davis has it.

22d question by the same. Will you look at paper marked "Ae" and state what you know about it?

Answer. I know that a statement was sent from the Traders' Bank to the office of Lee and James, showing that Hector Davis had overdrawn to a considerable amount; the precise amount I do not now remember, but I am satisfied it was $24,098.82, the amount stated by Mr. Jno. C. Davis, teller. Mr. James, the executor, (through Lee & James,) deposited the amount in the Traders' Bank to meet this overdraft; Mr. James, the executor, also deposited in the said bank $132, to meet a check of Hector Davis for that amount, given in his life-time to C. P. McCandlish, which had not been presented when the bank-book was written up. The check-book and bank-book of Hector Davis show that it required $117 to balance the account of H. Davis with the bank (Traders') on the 1st Octo., 1863.

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23d question by the same. Do you know anything of the payment of $60 to Martin Maddux on the 9th Jan'y 1863? if so, state what it was for, and how it was paid.

Answer. The amount of $60 was paid at the time to M. Maddux by Mr. James; 'twas due for services rendered by Maddox for bringing trade to the house in the life-time of Hector Davis. No receipt was taken, but I know the amount was due and was paid.

Present, James Lyons, esq., counsel for Crouch.

Cross-examined by counsel for Crouch:

1st question by James Lyons, esq. When did Hector Davis die?

Answer. January 7th, 1863.

2d question by the same. By whom was this bill marked "A" paid?

Answer. It was paid through the house of Lee & James by the executor, R. D. James.

3d question by the same. Why was the bill marked "B" charged to N. M. Lee, and not to Lee & Davis? and why did Lee & Davis pay $76 of it, and N. M. Lee $13?

Answer. Because Davis & Lee had a partnership known to the public as N. M. Lee. On their books the firm was called N. M. Lee & Co. I mean that it was not known to the public generally that Davis was a partner in that firm. Lee & Davis paid $76 and N. M. Lee $13 because Mr. Lee told me that $13 of the work was done for him individually, and the balance of the work was for the firm.

4th question by the same. When was the account marked "F" paid?

Answer. On the 21st of Feb., 1863, I presume, sir. I so endorsed it on the back.

5th question by the same. By whom was it paid?

Answer. By Mr. James, executor, through Lee & James.

6th question by the same. Did Mr. Bowcock go to Arkansas?

Answer. I understood he did; I don't know of my personal knowledge that he did go there; I believe he went there.

7th question by the same. Did he ever come back?

Answer. No, sir.

8th question by the same. Do you know whether he ever made any report of his proceedings, and how he spent the thousand dollars?

Answer. I never heard of any report from him.

106 9th question by the same. Why was receipt marked "O" in book, and the others, marked P, Q, R, S, T, U, V, W, X, Y, Z, Aa, Ab, and Ac, taken in the name of Hector Davis, if the accounts were paid by the executor after his death?

Answer. Because the name of the firm was Hector Davis. Mr. James had an interest in the concern, so far as the auction sales of negroes went.

10th question by the same. What interest had he?

Answer. One-fourth, was my understanding of it, of the commissions arising from the sales of negroes.

11th question by the same. Did you ever see the note for $5,000, which you say was endorsed for the accommodation of J. W. Wells?

Answer. Yes, sir.

12th question by the same. How was it endorsed?

Answer. By Hector Davis first and Ro. H. Davis next, I think. I am not positive as to the order, but both of their names were on the note.

13th question by the same. Were you in the employment of Davis & James while they were doing business under the name of Hector Davis?

Answer. From about 25th October, 1862, to the 1st of January following, when the firm expired.

14th question by the same. How was the firm account kept in bank?

Answer. In the name of Hector Davis.

B. W. ELMORE.

The further taking of these depositions is adjourned till to-morrow morning at 10 o'clock a. m., at the same place.

THOS. J. EVANS, *Comr.*

THURSDAY, *Nov'r 16th*, 1865—10 o'clock a. m.

Present, R. D. James, Andrew Johnston, esq.

James E. Goddin, being first duly sworn, deposes and says as follows, in answer to the following questions propounded by Andrew Johnston, esq.:

1st. Will you look at bill of Dr. R. G. Cabell, for $70, and marked "Af," and state whether or not it is correct, and whether or not it was paid, and by whom, and how ——— came to know it?

Answer. I was living as clerk with Lee & Bowman, on the 8th March, 1864. The bill is correct, and was paid by Mr. James, the executor of Hector Davis, dec'd, through the house of Lee & Bowman, and was charged to James, ex'or, &c., on the books of Lee & Bowman.

107 2nd. Look at the bill of the hospital of the Medical College for $290, and marked Ag, and state what you know about it, will you?

Ans. It is correct and was paid by H. Davis' ex'or, through the house of Lee & Bowman.

3d. Will you look at the bill of the Mutual Assurance Society of Va. for 1864 for $25.30, and marked Ah, and state how much of it was chargeable to H. Davis' estate, and how much of it was paid by that estate and how?

Answer. Eight dollars and 4 cents were chargeable to the estate of H. Davis, and were paid by the ex'or, through the house of Lee & Bowman. Mr. Lee told me to charge the residue of the bill, $17.26, to him, which was done.

4th. Will you look at the receipt of B. W. Elmore, marked Ad, and state what you know about it?

Answer. This bill is correct and was settled as stated in the receipt.

5th. Will you look at the receipt of W. H. Given for $7,180.85, and marked Ai, and state what you know about it?

Answer. The amount stated in the receipt was to the credit of W. H. Given, on the books of Hector Davis, dec'd, and was paid by his executor, through the house of Lee & Bowman.

6th. Will you look at the bill of A. A. Houchens for $300, and marked Ak, and state what you know about it?

Answer. It is correct and was paid as the last aforesaid was.

7th. Will you state what you know about $20 paid for a truss for Joe?

Answer. Joe was a slave and belonged to H. Davis' estate. The truss was bought for him and $20 paid for it. I paid it for Mr. James, the executor.

8th. Do you know anything of the payment of $32, three policies of insurance? if so, state what you do know.

Answer. The amount was paid by me on bills against the estate. I paid it for the executor, to the Virginia Fire and Marine Insurance Com'y of Va. The receipts have been lost as were a good many of the papers of Mr. James on the evacuation of Richmond.

9th. Do you know anything of the payment of $172.25 to H. W. Montgomery? if so, state what you know.

Answer. The amount of $172.25 was to the credit of W. H. Montgomery on the books of Hector Davis, dec'd. For the executor I paid the amount on the order of H. W. Montgomery. That order has been lost or mislaid.

10th. Do you know anything of the following payments:

To soldiers' fund tax	$651	60	Dec. 2,	1864
To officer seal for arresting girl Roberta	5	00	" 7,	"
To clerk of Goochland County sundry fee bills	3	05	Feb. 1,	1865
To board and clothing for slave Sue	125	00	" 1,	"
108 To medicines for slave John	4	00	Mch. 11,	"
To advertising and medicine	38	00	" "	"

If so state what you do know about it.

Answer. The bills were all paid by me as clerk of Lee & Bowman for the executor of H. Davis, dec'd. I believe they are correct. The receipts have been lost.

11th. Do you know anything of the payment of $700 for a $1,000 confederate bond, No. 8596, and $350 for a $500 confederate bond, No. 8424? if so, state what you do know.

Answer. I know that Mr. James, the executor, bought and paid for these two bonds at 70 per cent. He bought them of S. M. Bowman, and paid for them on the 19th July, 1864. The said bonds or scrip cannot be found. I have looked for them.

And further this deponent saith not.

JAMES E. GODDIN.

15th. Question to B. W. Elmore by Andrew Johnson, esq'r. Will you look at the bill of the Richmond Enquirer for $36, and marked Alm, and state how much of it was chargeable to the estate of Hector Davis, dec'd.

Answer. Twelve dollars. The residue of the bill was charged to other parties who were properly chargeable with it.

16th. Was it paid ($12) by the executor?

Answer. It was.

17th. Do you know anything of any payment to Maj. F. Rawles by the ex'or of H. Davis, besides the one of which you have spoken in your answer to the 11th question on your examination in chief? if so, please state what you do know.

Answer. On 27th June, 1866, for the ex'or of H. Davis, I paid to Maj. Rawles, in person, the sum of $70.12, it being the balance due to him as standing to his credit on the books of Hector Davis, dec'd.

18th. Do you know anything of the payment of the following sums by R. D. James, as executor of Hector Davis, dec'd:

To Virginia Ann Isham	$100 00,	12 January,	1863,
" William Isham	20 00,	15 January,	1863,
" ——Ettenger	20 00,	16 March,	1863,
" protest on Jones' note	2 60,	12 May,	1863,
" expenses collecting Jones' debt	47 30,	12 May,	1863,
" Wm. Isham's boots	8 00,	22 May,	1863,
" expenses girl Susan, from Tennessee	40 00,	13 June,	1863,
" Sheriff Henrico, tax-bill	13 70,	12 Dec'r,	1863.

If so, state what they were paid for, by whom they were paid, and when.

Answer. They were all paid at the dates above named, respectively, as appears from the books in which I made the entries myself, and by R. D. James, as ex'or of Hector Davis, through the house of Lee and James. The payment to Virginia Ann Isham
109 was for sewing done by her for negroes sent to Davis' auction-house for sale, $100 on account. Wm. Isham was a slave belonging to the estate of H. Davis, deceased, and the $20 were given to him to buy clothes, &c. The payment of the $20 to Ettenger was for bringing trade to the auction-house of Hector Davis. The $47.30 were paid to Jos. G. Boisseau, expenses, &c., for going to Petersburg to collect the debt of Dr. James. The $8 were paid for boots for the slave Wm. Isham, above mentioned. The $40 were paid to express-company for bringing from Tennessee to Richmond a negro girl named Susan, belonging to Hector Davis. For some of these payments receipts were taken, and for others receipts were not taken. The receipts taken have been lost. That is to say, I understand they cannot be found.

19th. Do you know anything of a payment of $68.63 to John J. Mitchell, on the 20th April, 1863? if so, state what you do know.

Answer. There was a balance to the debit of Jno. J. Mitchell on the books of Hector Davis of $2,481.37; but Mr. Davis took out to Arkansas two negro's which belonged to Mr. Mitchell, named William and Daniel. I heard Mr. Davis say in his life-time that he was anxious to settle the matter with Mr. Mitchell, and allow him credit for the negroes, but it was not settled before his death. After his death Mr. Mitchell came to settle it, and said that he was to be allowed for William $1,475, and for Daniel $1,075. Mr. N. M. Lee said that that was right, and Mr. James, as ex'or, paid the difference of $68.63 in settlement of Mr. Mitchell's account.

20th. Do you know anything of the amount of $2,442, paid by R. D. James as ex'or of Hector Davis to the firm of Hector Davis & Co., on

account of that amount paid on the 1st January, 1863, by Hector Davis & Co. to Ed. Lightfoot for John Lightfoot? If so, please explain the transaction.

Answer. The books of Hector Davis (the firm of Hector Davis and R. D. James) showed that they were indebted to John Lightfoot in the sum of $2,442. On the 1st of January, 1863, when the new firm of Hector Davis & Co. had been formed, (consisting of Hector Davis, N. M. Lee, and R. D. James,) Mr. John Lightfoot sent for the money by Ed. Lightfoot, and it was paid by the new firm of Hector Davis & Co. Afterwards, Mr. R. D. James, as ex'or of Hector Davis, settled the amount with the new firm of Hector Davis & Co.

21st. Do you know how much money Hector Davis left on hand at the time of his death, and which came to the hands of R. D. James as his ex'or? If so, state what you know of it.

Answer. I do not remember exactly, but whatever money he left is credited to his estate in statements and accounts furnished to the commissioner by Mr. James, the executor of Hector Davis, deceased. The amount was not large. It was not his habit to keep much money on hand. He was president of the Traders' Bank, and kept his money there. He did not usually keep much money any length of time, even in bank. He was an active business man, and kept his money constantly moving, turning it over in trade of some sort, and at his death had considerably overdrawn on his account in bank.

B. W. ELMORE.

Adjourned to the 18th of Nov'm'r, 1865, at 10 o'clock a. m.

THOS. J. EVANS,
Commr.

NOV'M'R 18TH, 1865—10 o'clock a. m.

Present, R. D. James, ex'or, &c.; Andrew Johnston, counsel for James; E. Y. Cannon, counsel for Wm. S. Crouch.

Examination of B. W. Elmore resumed:

22d. Do you know anything of the charge of $10 paid to the Richmond Enquirer on the 3d Jan'y, 1863, mentioned in the statement marked XX?

Answer. Mr. Davis was a regular advertiser in the Richmond Enquirer, at $40 a year, and I have no doubt this was a quarterly payment, and was paid. The receipt, if one was taken, has been lost, along with many other papers of Mr. James. The amount was paid through Hector Davis & Co., for the executor, and is entered on their books in my handwriting.

23d. Do you know anything of item of city-tax bill, $284.06, mentioned in said statement "XX?"

Answer. That item is entered on the books of Hector Davis & Co. in my handwriting, as paid by them for the executor.

24th. Do you know anything of the following items entered in the said statement marked "XX:"

H. Meinhard & Bro.,	marked	"Al"	in receipt-book	.....	$1,198 91
Mary Goodwin,	"	"Am"	"	.....	1,479 80
Hugh Scott,	"	"An"	"	.....	1,195 60
Owens & Son,				.....	27 30
Jno. M. Ferguson,	"	"Ao"	"	.....	1,586 10
Tabb & Son,				.....	16 20
A. W. Nolting,	"	"Ap"	"	.....	7,956 90
B. L. Winston,	"	"Aq"	"	.....	2,877 95

If so, please state all you know about them.

Answer. These sums were all paid by Hector Davis, through the house of Hector Davis & Co., and were paid by the executor to the house of Hector Davis & Co. in a subsequent settlement between them. The sums were due to Meinhard & Bro., Mary Goodwin, Hugh Scott, Jno. M. Ferguson, A. W. Nolting, and B. L. Winston respectively for the nett sales of negroes sold for them by Hector Davis, autioneer. The sums paid to Owens & Son and Tabb & Son were for commissions to them for trade brought by them to the business house of Hector Davis.

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25th. Do you know anything of item (in statement XX) of ten thousand dollars paid to John B. Davis on due-bill, Jan'y 3d, 1863? If so, please state all you know about it.

Answer. I know that the amount was paid. Hector Davis himself directed it to be paid. It was paid through the house of Hector Davis & Co., I think, by their check on the Traders' Bank. The charge is on their books in my handwriting. I think the payment was made on a due-bill. It was customary, on the settlement of such matters, to tear up the due-bill. The amount paid by Hector Davis & Co. for Hector Davis was repaid to them by R. D. James, executor of H. Davis, in a subsequent settlement between them.

Cross-examined by Ed. Y. Cannon, esq., counsel for Crouch:

1st. In your answer to the last question, you state that the amount paid by Hector Davis & Co. to John B. Davis of $10,000 was in the shape of a due-bill, as you think, and that said due-bill was probably torn up, as it was customary on the settlement of such matters to tear up the due-bill. Have you made, or has any attempt been made by anybody, to find said due-bill? and do I understand you that it was the practice of the concern, after making settlements involving sums of as great magnitude as this, to tear up the vouchers for such payments?

Answer. I have made no attempt to find said due-bill, and I don't know that any attempt has been made by anybody else. It was usual with Mr. Davis when he had borrowed money, and given due-bill for it, as I suppose was the case in this instance, not to enter it to the credit of the party of whom he borrowed it on his books, but simply to give a due-bill, and when the due-bill was paid to tear it up. It is that sort of transaction that it was customary to tear up the due-bill, and not general transactions.

2d. Was not this due-bill paid by the concern of Hector Davis & Co. when Hector Davis was sick and absent from their place of business, if at all, and was not the custody of that paper in the hands of Mr. James, and if it was torn up at all, must it not have been torn up by him, and not by Hector Davis himself?

Answer. It was so paid. The custody of the paper was in the hands of Hector Davis & Co., or rather in my custody, as the clerk of the concern of Hector Davis & Co. Not necessarily torn up by Mr. James; it may have been torn up by myself, knowing his habit.

3d. If the due-bill has not been torn up, in whose custody ought it to be at this time?

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Answer. I should suppose in Mr. James' custody, or in the custody of one of the concerns.

4th. Have you any personal knowledge of the consideration of that supposed due-bill, or are you prepared to state that said sum of $10,000, whether in the shape of a due-bill or not, was a debt due by Hector Davis individually to John B. Davis, and that R. D. James was not

bound for said debt, or any part of the same, or derived no benefit therefrom?

Answer. I have not any knowledge (personal) of the consideration of that due-bill. I should suppose it was due by him individually, from the fact of his ordering its payment, and that R. D. James, I should think, was not bound for said debt or any part of it. I do not know of any benefit that R. D. James derived from it.

5th. Is your only reason for making the above answer the fact that your recollection is that Hector Davis ordered the payment to be made?

Answer. There is one other reason, which is, that Mr. Hector Davis, in making his arrangements with Mr. James, agreed to furnish the capital necessary for the purpose of carrying on the business.

6th. How do you know that?

Answer. From repeated conversations with Mr. Hector Davis.

7th. If Mr. James had an interest in the business of Hector Davis, and in the course of that business had occasion to borrow $10,000, either for himself or for the house, would a due-bill for the amount have been given by Hector Davis or by R. D. James?

Answer. If he had been borrowing for himself he would have given the due-bill in his own (R. D. James) name. If he had borrowed it for the house of Hector Davis, he would have given the due-bill in the name of Hector Davis, by himself as attorney for Hector Davis. He had power of attorney to sign checks for the firm of Hector Davis. I don't know how he would have signed a due-bill—whether as attorney or in his own name without the word attorney.

Can you state how this due-bill was signed?

Answer. By Hector Davis himself, I think. I can't be positive about it.

9th. Are you positive of any fact connected with that transaction?

Answer. Of its payment by the direction of Hector Davis.

And further this deponent saith not.

B. W. ELMORE.

JAMES E. GODDIN, being re-examined, deposes:

12th. State if you know anything of the settlement made by R. D. James, as executor of Hector Davis, with the firm of Hector Davis & Co., and with the firm of Lee & James, now shown you, marked "X X" and "Y Y;" and, if yea, state how you came to know anything about them.

113 Answer. I do. I succeeded Mr. Elmore as clerk for the house of Lee & Bownan, successors to Lee & James, and I was requested by R. D. James, executor of H. Davis, deceased, to keep a correct and just account of all receipts and disbursements received by said firm of Lee & Bownan, and also to make such entries upon the books of Hector Davis, Hector Davis & Co., and Lee & James, as were proper.

14th. Look at the accounts X X and Y Y, and state what you know about the balance of $7,841.28, purporting to have been paid 1 Jan'y, 1864, by Lee & James, to Hector Davis & Co., and whether or not that balance was subsequently repaid to Lee & James by R. D. James, ex'or of Hector Davis, deceased, and when?

Answer. That balance was paid by Lee & James to Hector Davis & Co., and was subsequently repaid to Lee & James by R. D. James, ex'or of H. Davis, dec'd, on the 1 Jan'y, 1864.

15th. Look at the balance of $38,797.02, on account of Y Y, and state whether that balance was or was not paid to Lee & Bownan by R. D. James, ex'or of H. Davis, dec'd, on the 1 Jan'y, 1864?

Answer. It was so paid, sir.

16th. State whether or not the balance last mentioned, was the final result of the accounts between the said executor and the said Lee & James, for receipt and disbursements by Lee & James, on behalf of the estate of Hector Davis, deceased?

Answer. It was.

17th. Look at the account of R. D. James against the estate of Hector Davis, deceased, marked "W W," for profits arising from commission, amounting to $9,593.87, and state what you know about it.

Answer. That amount is correct, as shown by the books of Hector Davis of that date. I made out the account myself from the said books. This account is subject to credits not yet put upon it.

Adjourned to the 20 of November, 1865, at 4 o'clock p. m.

THOS. J. EVANS, *Comr.*

NOV'R 20TH, 1865—4 o'clock p. m.

Present, R. D. James, ex'or of Hector Davis, deceased; Andrew Johnston, counsel for R. D. James.

Examination of James E. Goddin, resumed.

18. Can you furnish the credits referred to in your last answer? If so, do so.

Answer. I can. The account marked "V V" contain—the credits referred to, amounting to $3,442.09, which, deducted from the sum of $9,593.87, mentioned in the paper marked "W W," leaves the sum
114 of $6,151.78, which is the true balance due from the estate of Hector Davis, deceased, to R. D. James, an account of his part of the profits in the commissions of the business of Hector Davis in which Mr. James was interested.

And further this deponent saith not.

JAS. E. GODDIN.

E. Y. Cannon, esq., appeared just after the above deposition was closed, and the same was re-opened for his cross-examination.

1st. State whether in your answers to the above questions you base those answers upon reference to the books of Lee & James and Lee & Bowman, or whether you have any knowledge of said transactions apart from the entries in the said books?

Answer. I base them upon the entries in those books.

The counsel for the defendant calls for the production of the books of Hector Davis, Hector Davis & Co., Lee & James, and Lee & Bowman, which have been referred to by Mr. Goddin and Mr. Elmore in this and the preceeding deposition.

JAS. E. GODDIN.

Adjourned to Tuesday evening the 21st Novm'r, 1865, at 4 o'clock p. m., by consent.

THOS. J. EVANS, *Commr.*

TUESDAY EVENING, *Novm'r 21st*, 1865—4 o'clock, p. m.

Present, R. D. James, ex'or of H. Davis, dec'd, Andrew Johnston, attorney for R. D. James, James E. Goddin, a witness, B. W. Elmore, a witness.

The executor produced the books called for by the counsel for the defendant.

The parties present waited till 6 o'clock p. m., when Mr. Cannon,

counsel for W. S. Crouch, the defendant, appeared and deferred the examination of Jas. E. Goddin and the books till Thursday evening, the 23d of November, 1865, at 4 o'clock p. m.

Adjourned to Thursday evening, the 23d of November, 1865, at 4 o'clock p. m.

THOS. J. EVANS, *Commr.*

THURSDAY EVENING, 23*d November*, 1865.

Present, R. D. James, ex'or of H. Davis, deceased, R. D. James' counsel, Andrew Johnston, esqr., James E. Goddin, the witness.

These parties waited till 6 o'clock p. m., and no other party appearing, and those present having no further questions to ask the witness, the deposition of the witness, James E. Goddin, was closed, and the
115 witness signed the deposition at the end of the answer to Mr. Cannon's question on page 22.

Adjourned to 3d Feby., 1868.

THOS. J. EVANS,
Commr.

FEBRUARY 3*d*, 1868.

B. W. Elmore, recalled by the commissioner and being again sworn, deposes and says:

1st question by the commissioner. Will you look at the account of P. S. Dawson for $7,476.40, now shown you, and state in whose handwriting that account was kept on the books of Hector Davis?

Answer. In my handwriting. I was acting at the time as the bookkeeper of Hector Davis, and that balance against Hector Davis of $7,476.40 was struck in the life-time of Hector Davis on his book.

2d question by the same Will you compare this account of Dawson's with the ledger of Hector Davis, and say whether the account is correctly copied from the book?

Answer. I have done so. The ledger is now before me, and, with Commissioner Evans, I have made the comparison, and find that the account is correctly copied from the book.

3d question by the same. Will you take the account now shown you of Jos. Stein for $2,210 31, against Hector Davis, and compare it with ledger of Hector Davis, and say whether the account is correctly copied from said ledger?

Answer. The ledger is now before me, and, with Commissioner Evans, I have made the examination, and find that the account is correctly copied from the ledger.

4th question by the same. In whose handwriting was that account kept on the ledger of Hector Davis?

Answer. The items of $137 and $1,500 are in the handwriting of Mr. Thomas, and the other items are in my handwriting. We were bookkeepers of Hector Davis at different times.

5th question by the same. Will you take the account now shown you, marked "XX," and compare it with the journal and ledger of Hector Davis, and say whether the account for $7,841.28 is correctly copied from the books?

Answer. I have made the comparison with Comr. Evans, and find that every item in the account is correctly copied from the books.

6th question by the same. In whose handwriting are the items in the account XX on the books of H. Davis?

Answer. All in mine, except the item of credit in said account XX, of $7,841.28, on the 1 Jany., 1864.

7th question by the same. Will you look at the account of B. W. Elmore for $2,375.31, and compare it with the books of Hector Davis, and say whether it is a true copy of these books?

116 Answer. I have done so. It is a true copy. With Comr. Evans, I have compared the account with the books.

8th question by the same. In whose handwriting are the items in the last-mentioned account entered on the books of Hector Davis?

Answer. In mine, except the items, one for $890 and one for $1,000, on one side of the account, and the item of $2,375.31 on the other side of the account, which are in the handwriting of James E. Goddin, who wrote up the books of Hector Davis.

9th question by the same. Will you take the account of Wm. A. Given for $180.85 against Hector Davis, and compare it with the books of Hector Davis, now before you, and say whether the said account is correctly copied from the said books?

Answer. I have done so, and find the account to be correctly copied from the said books.

10th question by the same. In whose handwriting are the items of this account entered on the books of Hector Davis?

Answer. They are all in my handwriting up to the 29 of December, 1862. The remaining items are in the handwriting of the before-mentioned James E. Goddin.

11th question by the same. Was there a general profit and loss account kept on the books of Hector Davis?

Answer. There was, but it does not embrace the profits and losses on the commissions for sales of slaves.

12th question by the same. Was there a profit and loss account of commissions for sales of slaves kept on the books?

Answer. No.

13th question by the same. Then how could the profits and losses on commissions for sale of slaves be ascertained?

Answer. From the account on the books called the "commission account;" by deducting the expenses of the auction business and sales from the commissions received, you would have the profits; and by deducting the commissions received from the expenses of the auction sales, you would have the losses. No separate expense-account of the auction business or sales was kept. The expenses were entered in the commission-account.

14th question by same. Will you take the account now shown you, marked "W W," of R. D. James, for $9,593.87, against the estate Hector Davis for his ¼ share of the nett profits of the commissions on sales, and compare it with the books of Hector Davis, and say whether this account is correctly made out from the said books?

Answer. I have made the comparison, and find that the total nett profits, as shown by the commission-account, is $38,375.46, to which R. D. James was entitled to ¼, $9,593.86½.

15th question by the same. In whose handwriting was that commission account kept?

Answer. In my own and other book-keepers of Hector Davis.

16th question by the same. Will you take the account now
117 shown you, marked "V V," of R. D. James with Hector Davis, showing a balance of $3,442.09, due from R. D. James to Hector Davis, and compare it with the books of Hector Davis, and state whether the said account is correctly copied from the said books?

Answer. I have examined the account with the books, and find it correctly stated.

17th question by the same. In whose handwriting were the items in this account entered on the books of Hector Davis?

Answer. In my own and other book-keepers of Hector Davis.

And further this deponent saith not.

B. W. ELMORE.

VIRGINIA, *City of Richmond, to wit:*

I certify that the foregoing depositions were taken, sworn to, and subscribed before me at the times and place mentioned therein.

Given under my hand this 3d day of Feb'y, 1868.

THOS. J. EVANS, *Comr.*

Supplementary report of Commissioner T. J. Evans.—Filed March 7, 1868.

DAVIS' EXECUTOR
vs.
CROUCH AND OTHERS.

To Thomas J. Evans, esq., comr. of the circuit court of the city of Richmond and State of Virginia.

DEAR SIR: On looking over your report of 18th February, 1868, account C, stated at the instance of James Lyons, esqr., I observe that there are several items of receipts and disbursements in January, February, and March, 1863, charged to me as executor, and credited in the same character, before my qualification as such, which was on the 13th day of March, 1863. In fact, these items appearing as receipts and disbursements were generally transfers of the amounts represented by them from the books of Hector Davis to the books of Lee and James, and a great many of them were not actually received or paid for some time after. From the books of Lee & James these items were transferred to the accounts of the executor.

The same remark applies also, to a considerable extent, to the subsequent items in the said account C.

If, in the course of the proceedings in this cause, it should become material, I wish to have the privilege of showing, in regard to each item of receipt or disbursement in the said acct., the true date of each
118 item, and specially to show that, when persons were creditors of Hector Davis at the time of his death, I have made payments to them or given them credits in other ways from time to time, and the whole debt has been entered as if paid and satisfied at a subsequent date.

Requesting that this may be reported by you to the court in connection with your report of 18th Feb., 1868, I am,

Very respectfully, yours,

R. D. JAMES.

COMMISSIONER'S OFFICE,
March 7th, 1868.

DAVIS' EX'OR
v.
CROUCH AND ALS.

In circuit court of city of Richmond.

At the instance of Andrew Johnston, esq., I report specially the foregoing paper as supplementary to my report of the 18th of Feb., 1869.

Respectfully,

THOS. J. EVANS, *Comr.*

Exceptions to Comr. Evans' report of March 5th, 1868, by Ann Crouch and her children.—Filed May 23, 1868.

DAVIS' EX'OR
v.
CROUCH ET } Excep'ns to the rep. of Com. Evans, of Mch., 1868.

Referring to my exceptions and note for the comr., which I wish considered as if here repeated, I submit the following additional exceptions (9) to all charges to the estate for investments in confederate bonds.

To the extent of 20,000, if allowed at all, the investment must be charged as the bequest to the negro woman Ann and her children. The will directs the $20,000 bequeathed to her shall "be invested in State stock by my executor, and applied by my executors as aforesaid." The ex'or was bound to make that investment, and nothing can relieve him from it.

There was no need for him to petition the court for permission to invest the funds in his hands, and I presume he did not file a copy of the will of Davis, and state what that will directed, nor state that there were debts which could be paid; but I cannot say positively, as the petition is not among the papers. But whether he did or not, the decree, of which a copy is filed, affords him no relief, for that decree does not order him to invest in confederate bonds, but says "the court doth grant the said R. D. James, ex'or, as aforesaid, leave to invest," &c. It
119 is obvious that the court did not intend to control the ex'or, and does not direct him to violate the will of his testator. The court had no power or authority to do so, and it would be most unjust to hold the court responsible for such an error when he had not the facts before him; for it is impossible to conceive that, with all the facts before him, the judge could have hesitated to reject his application and order him to obey the will and the law.

As to the surplus beyond $20,000, the executor should have paid the debts—confed. debts—with it, and especially the debt claimed by himself of $9,593.87, which the commissioner, in the most unprecedented and extraordinary manner, allows him now to bring forward as a specie debt of $5,760.13.

10. And I except to the amount of $5,760.13, reported by the commissioner as a specie debt due to the ex'or for the commutation of the confed. debt mentioned in the preceding exception. This is the most extraordinary allowance I think I ever saw in a commissioner's report, except one.

By account "A," the comr. reported balance of $14,135.62 due from the ex'or to the estate on the 3d of April, 1863, making in good money, as the counsel for the ex'or insists, between $200 and $300, of which the sum of $40,148.47 was due on the first day of January, 1864; and yet this same commissioner in this same report allows as a debt due from the estate to the ex'or a debt of $5,760.13 for commutation of a confed. debt of $9,593.87, and on the first of January, 1863—in other words, with four times as much money in his hands on the first of January, 1864, as would pay our debt, the comr. allows or justifies the ex'or to hold up his debt until half of the estate nearly is lost by bad investments—illegal investments,(when the payment of his own debt was an investment which could not fail,) and then permits $9,593.87 of confed. debt to absorb $14,135.62, and leave a balance due of $5,760 due to the ex'or, when, if the first sum ($9,593.87) be deducted from the second ($14,135.62,) the ex'or is indebted to the estate $4,541.75.

Was ever such a monstrosity allowed before?

I insist that the debt to James should be considered as paid by the confed. investments which he made when he ought to have paid it.

11. I except to the debt reported as due to Holladay—$17,500.

I. Because it was the duty of the ex'or to relieve the estate from the debt, by requiring Holladay to sue Jones, the principal; and the ex'or is personally liable for the debt unless he shows that Jones, the principal, was insolvent when the debt became due.

II. Because it is not shown that Jones was, or is, insolvent.

III. Because the debt was due on the first of January, 1862, and was payable, therefore, in the currency of that time, (see Dearing v. Rucker,) and should have been paid, if necessary, out of the $40,000 held by the ex'or in 1863.

IV. If the debt was not payable in confed. currency, still the
120 ex'or should have bought silver enough to pay it with, instead of investing in confed. bonds, or should have submitted it to the court, if Jones was insolvent. It was a gross and culpable breach of duty not to do so, for which the ex'or is responsible to the extent of his bad investments.

V. Because it was the duty of the executor to pay all debts pari passu, and a breach of duty for which he is liable to pay confed. debts in full and leave specie debts unpaid.

12. I except to the debt reported to be due to Sallie and Betty Davis, $4,409.24.

I. Because the bequest of $15,000 to them is a satisfaction of the debt.

II. Because the report of Fleming, upon which the allowance is made, was made after the death of Hector Davis, and when his estate was not only unrepresented, but the report shows that the amount reported is probably not due; and it was the most culpable negligence in the ex'or not to have a proper settlement made. But the settlement is void, because made when Davis was dead and unrepresented, and the wonder is, that said commr. should receive it as a voucher. I invite the attention of the court to the remarks of Commr. Fleming upon his own report, which I suppose our commr. did not read.

III. Because so much of this debt as is due is a debt of the highest dignity, and ought to have been paid before any other debt or investment, and the ex'or is personally liable for it to the extent of all his bad investments, and the confed. debts which he paid must also, if necessary, be treated as unpaid; and,

13. I except to the claim of Lydia Ramson—$240. Hector Davis was an unmarried man, and if he had a child it was a bastard, for whom he was not bound except by special contract. There is no proof that he had a child, or that he contracted for its board.

14. I except to the claim of W. L. Day for $150.15. This was a confed. debt, if any, of date the 17th of March, 1862. The ex'or always had money to pay it, and while the commr. reports a large balance in confed. money against the ex'or, he reports this confed. debt against the estate (which the ex or ought to have paid in confed. money) as a specie debt.

15. I insist that the executor shall be charged with every debt reported by him "good" and every debt reported by him "doubtful," unless he obtained judgments against them, because it was his duty to have obtained judgments against all who did not pay and were not deemed insolvent.

16. I except also to the failure of the ex'or to sell the bank-stocks and

insurance stocks to pay the debts, to the relief of the real estate, and insist that the ex'or shall be charged with their value.

17. I except to the credit n ac. B, for sales of city of Richmond stock, because it was unwise and unnecessary.

18. I except to all debits for money paid to Ann Davis.

121 It was the duty of the executor to invest her money in State stock, and she was entitled to the interest upon that, whether it was much or little, and nothing more, and having failed to do so, he is chargeable with the legacy and the interest upon it, and the estate is not responsible for it. The ex'r chose to violate the will and invest in confed. bonds, and he must take the confed. bonds and pay Ann Davis.

19. I except to all comm's allowed to the ex'r because of his mal-administration.

ANN CROUCH, *for herself and her children.*
By JAMES LYONS, *her counsel.*

MAY 23, '68.

And at another day, to wit, at a circuit court of the city of Richmond, held in the court-house in the said city, on the 27th day of February, 1869, Ann W. Crouch and her children, by leave of the court, filed their petition in the words and figures following, to wit:

To the honorable John A. Meredith, judge of the circuit court of the city of Richmond:

The petition of Ann W. Crouch and her children respectfully sheweth, that in a suit now depending in this honorable court between your petitioners and R. D. James, ex'or of Hector Davis, dec'd, it appears that a very large sum of money, parcel of the estate of the said Davis, which your petitioners claim as devisees of the said Davis, is in the hands of the said James, and, as your petitioner allege, is insecure, because, as they are advised, the estate of the said James is very small, and all his securities but one are insolvent. They therefore pray that one of the commrs. of this court may be directed to enquire into the safety of the said fund, and the pecuniary ability of the said James and his securities, and if it be found that the said fund is insecure, that the said James may be compelled to pay the same into court, or give such security for it as this court may deem proper.

WM. S. CROUCH.
ANN W. CROUCH.

And on the same day, to wit, at a circuit court of the city of Richmond, held in the court-house in the said city, on the 27th day of February, 1869, a decree was entered in the words and figures following, to wit:

DAVIS' EX'OR
vs.
CROUCH ET AL.

CROUCH ET AL.
vs.
DAVIS' EX'OR.

122 Upon the motion of the def'ts in the first suit, who are the pl'tffs in the second, who this day filed their petition, alleging

that the funds belonging to the estate of Hector Davis, dec'd, which are in the hands of R. D. James, the ex'or of said Davis, are not safe, the court, without at this time deciding any question in the cause, doth refer it to one of its commrs. to enquire, after ten days' notice to the said James, what is the pecuniary ability of the said James, and of each of his securities, and make report thereof this court, with any matter specially deemed pertinent by himself or required by either of the parties to be so stated.

And at another day, to wit, at a circuit court of the city of Richmond, held in the court-house in the said city, on the 19th day of May, 1869:

These causes came on this day to be again heard upon the papers formerly read and the report of Commr. Evans of the 5th day of March, 1868, with the exceptions thereto by the defendants, Ann Crouch and her children, and was argued by counsel. On consideration whereof, the court, without, at this time, deciding any question raised in the cause, doth recommit the said report, with the exceptions thereto, to Commr. T. J. Evans, with instructions to report upon the said exceptions, and to examine and restate the said accounts, so far as the said exceptions or any new evidence adduced before him may require, and to report to the court all evidence which may be offered before him by either of the parties, upon all the points raised by the exceptions of the defendants, or any other point properly arising in the cause, with any other matters deemed pertinent by himself or which may be required by either party.

And upon the motion of the defendants, Ann Crouch and her children, the court doth adjudge, order, and decree that R. D. James, ex'or of Hector Davis, do deliver to the said Ann Crouch and her children, or their agent, possession of all the real estate of which Hector Davis died seized, to be held by them subject to any demand which may be hereafter made upon it by decree of this court, for the payment of the debts and legacies of the said Hector Davis. But the said defts. are not to have the benefit of this decree until they, or some one of them, shall enter into bond, payable to the Commonwealth of Virginia, in the penalty of $2,000, with security, to be approved by the clerk of this court, conditioned to account for and pay over the nett rents and profits of the said real estate, after deducting taxes, insurance, repairs, and the proper cost of collection, as this court may, by its decree, require within sixty days after being served with a copy of such decree; and it appearing by the statement of the said R. D. James that a portion of the real estate of the said Hector Davis is in the possession of N. M. Lee, the court doth adjudge, order, and decree that said N. M. Lee deliver the same to said def'ts or their agent, or shew cause to the
123 contrary before this court on Saturday next at 10 o'clock a. m., being previously served with a copy of this decree; and the court doth further adjudge, order, and decree that the said R. D. James, ex'or of Hector Davis, do render before Comr. Evans an account of the rents and profits of the real estate of Hector Davis since his death.

Exhibit filed by plaintiffs, June 1st, 1869.

CROUCH AND AL.S. *v.* DAVIS' EX'OR. } Motion for additional security.

John B. Davis, one of the sureties in the bond of R. D. James, ex'or of Hector Davis, dec'd, states that the value of his estate, after the pay-

ment of all his debts, and of such liabilities for others as he expects to be compelled to pay, is more than fifty thousand dollars, and that the value of his real estate is as much as fifty thousand dollars.

And he further states, one of the co-securities, G. D. Pace, is dead, and that, so far as the said John B. Davis knows and believes, the estate of the said G. D. Pace is insolvent; and that the other co-securities are also insolvent, so far as he knows and believes.

JOHN B. DAVIS.

RICHMOND, 12 *March*, 1869.

We agree to except the foregoing statement in lieu of Mr. John B. Davis' examination on oath before the court on the hearing of the motion aforesaid.

JAMES LYONS,
Counsel for Plaintiffs.
JOHNSTON & WILLIAMS,
For Defendant.

At another day, to wit, at a circuit court of the city of Richmond, held at the court-house in the said city, on the 15th day of November, 1869:

By leave of the court, the infant defendants, Jennie, Audubon, Victoria, and Matilda Davis, by Alfred Shield, their guardian ad litem, and the defendant, Ann Davis, filed their answers, to which the plaintiff replied generally, which answers, with the Exhibit A. D., are in the words and figures following, to wit:

The answer of Ann Davis to a bill of complaint exhibited against her and her children in the circuit court of the city of Richmond by R. D. James, ex'or of Hector Davis, dec'd.

This respondent, for answer to the said bill, answers and says
124 that, by the will of the said Davis, he bequeathed twenty thousand dollars to this respondent and her children, which he directed his said executor to invest in Virginia State stock, but which he did not so invest and now pretends that he invested the money in confederate bonds.

Whether he did or not, this respondent does not know, but she is advised and insists that such investment, if made, was illegal, and neither she or her children are bound by it; that she and they are entitled to have the said twenty thousand dollars paid by the executor, and invested as the will directs, and the interest from the death of the said Davis paid to her, subject to a credit for such payments as he has made to your respondent, which amount, in the aggregate, to about sixteen hundred dollars; and she now demands her full rights.

This respondent is wholly ignorant of the manner in which the said executor has discharged his duty, but she has been informed that he has not performed it faithfully, has wasted the estate, applied much of it to his own use, and now pretends that it is insolvent. To sustain her allegations, she now exhibits herewith a letter from the said James to her daughter, Virginia Davis, marked "A. D.," in which he avows that he has wilfully disregarded the will of his testator as to the investment of the $20,000, and pronounces the estate of his testator perfectly solvent.

This respondent, in conclusion, prays that he the said James may be

held to the most rigid settlement, according to law, and all the rights of her children and herself protected.

her
ANN + DAVIS.
mark.

Witness: A. W. ROSEN.

This day, Ann Davis, the respondent in the annexed answer, made oath before me that the statements contained in the said answer are true, to the best of her knowledge and belief.

Given under my hand this 12th day of November, 1869.

A. W. ROSEN,
Notary Public for the City of Richmond.

Exhibit A D, with answer of Ann Davis.

RICHMOND, *Nov.* 28, 1866.

Miss VIRGINIA DAVIS,
Philadelphia, Penn:

Your favor of the 24th inst. to hand.

I will try to explain to you the nature of your father's will. He left $20,000 to be invested in State stock, the interest of 1-5 to be
125 given to your mother and the balance of the interest arising from the amount to be used in the support of you' children.

Luckily for you all, the money was not invested, because $20,000 of our currency then, and such as he died possessed of, would not have brought you all but a few thousand dollars of State stock, which is worth now only 40 cents on the dollar, and the State is not paying any interest at all. I saw the injustice of such an investment, and, notwithstanding I was directed by the will to do so, I refused to make it, well knowing, if it was done, it would deprive you practically of what was intended to be left you by your father. In consequence of thus acting, some of the other legatees have brought suit against me, claiming the will ought to have been carried out and the investment made. Owing to this lawsuit, the property cannot be sold, and consequently no funds can be realized to pay debts or legacies. You will see, as I wrote your mother some time ago, that as a result of this I have no means in my hands to pay your debts or to appropriate to your support; nor will I have until there is some decision of the above-mentioned suit. I know the case is a hard one, but I endeavored to protect your interests, and what else could I do? I trust it will all work well one of these days. In the mean time I can only promise to do the best I can for you under the circumstances. I will try to send you some money in a few days.

Tell Ben I have been in the country for some time. This is the reason I have not answered his letter; that he must study hard and become a smart man. When the money comes he must get him an overcoat. My love to all.

Truly, your friend,

R. D. JAMES.

Answer of infants.

The answer of Jenney, Audubon, Victoria, and Matilda, children of Ann Davis and Hector Davis, infants under the age of twenty-one years, by Alfred Sheild, their guardian ad litem, to a bill of complaint exhib-

ited against them and others in the circuit court of the city of Richmond by R. D. James, executor and legatee of Hector Davis, deceased.

These respondents, saving and reserving to themselves all benefit of exceptions to the said bill, for answer thereto answer and say, that, being infants of tender years, they have not such knowledge as enables them to say whether the allegations in the said bill are true or not, and that therefore submit their rights and interests in the premises to the care and protection of the court. And having answered, pray, &c.

ALFRED SHEILD,
Guardian ad litem of Infant Defts.

126 At another day, to wit, at a circuit court of the city of Richmond, held at the court-house in the said city, on the 22d day of November, 1869, a decree was entered in the words and figures following, to wit:

DAVIS' EX'OR
vs.
CROUCH & ALS. } Two cases.

On the motion of Ann Davis, by her counsel, James Lyons, esq., and with the consent of Ann Crouch and her children, by their counsel, James Lyons, esq., R. D. James, executor of Hector Davis, dec'd, making no objection thereto, by his counsel, Johnston and Williams, the court doth order and decree that Lee & Goddin, agents of Ann Crouch and her children, in possession of the real estate of Hector Davis, dec'd, under and by virtue of the decree made herein, on the 19th day of May, 1869, do pay to the said Ann Davis, out of the funds in their hands received from the said real estate, the sum of fifty-seven dollars on account of her legacy under the will of the said Hector Davis, to be charged to her in the accounts of the estate hereafter to be settled.

Report of Commissioner Thomas J. Evans.—Filed 4th May, 1870.

COMMISSIONER'S OFFICE,
Richmond, May 4th, 1870.

In the circuit court of the city of Richmond.

DAVIS' EX'OR
vs.
CROUCH & ALS., } 1st suit.
and
DAVIS' EX'OR
vs.
CROUCH & ALS. } 2d suit.

Pursuant to the decree entered in these causes on the 19th day of May, 1869, I issued a notice fixing on the time and place for executing the said decree. Service of said notice was duly acknowledged by the counsel for all the parties, the evidence of which acknowledgement is herewith returned.

In consequence of the removal of commissioners in chancery from office by the military authorities of the United States, the case was not taken up on the 7th of June, 1869, the day appointed by the aforesaid notice.

On the 23d of December, 1869, I issued a new notice, fixing on Friday, the 7th of January, 1870, at 10 o'clock a. m., as the time, and office No.

510 Franklin street, in the city of Richmond, as the place, to execute the said decree; which notice is herewith returned.

On the 7th January, 1870, R. D. James, executor of Hector Davis, dec'd, and Andrew Johnston, esq., counsel for said executor, and
127 James Lyons, esq., counsel for Crouch, &c., and A. R. Holladay, esq., a witness, attended at my office, and Mr. Lyons filed interrogatories to Mr. Holladay, which interrogatories, together with Mr. Holladay's answers thereto, are herewith returned. And the case was adjourned to the 17th of January, 1870, at 10 o'clock a. m.

On the 17th of January, 1870, R. D. James, ex'or, and Andrew Johnston, esq., his counsel, and A. R. Holladay, esq., the witness, attended at my office, and I took the deposition of A. R. Holladay in answer to the aforesaid interrogatories, which deposition and copies of the letters referred to in said deposition are herewith returned.

And then the case was adjourned to the 21st day of February, 1870, at 10 o'clock a. m., with leave to Mr. Lyons to re-examine Mr. Holladay, if he thought proper to re-examine him.

On the 21st of January, 1870, R D. James, executor of Hector Davis, attended at my office, and Mr. Lyons filed with me a note of enquiry as to the money paid by Jones to R. D. James, and of argument as to the debt claimed by the executor as proceeds of the partnership. And then the case was adjourned to the 26th of January, 1870, at 10 a. m.

On the 26th of January, 1870, none of the parties attended, and the case was adjourned to the 29th of January, 1870, at 10 a. m.

On the 29th of January, 1870, R. D. James, executor, and Andrew Johnston, esq., his counsel, attended at my office, and I took the deposition of N. M. Lee, R. D. James, and A. D. Williams, at the instance and on behalf of the said executor, which depositions are herewith returned. And the case was adjourned to the 1st of February, 1870, at 10 a m.

On the 1st February, 1870, R. D. James, executor, and Andrew Johnston, esq., his counsel, attended at my office, and I took the examination of R. D. James, executor, under oath, upon the written requisition of Mr. Lyons, filed with me, as before stated, on the 21st January, 1870; which examination and copies of the accounts, marked "X, X, X, X," and referred to in said examination, are herewith returned, together with duplicates of the receipts given by R. D. James, ex'or, to Henry N. Jones, marked "X, X, X."

On the 23d of February, 1870, Mr. Lyons filed with me another note of argument, which is herewith returned.

On the 7th of March, 1870, Mr. Johnston filed with me another note of argument, which is herewith returned.

And now I report that, since my report of the 18th of February, 1868, there has been filed with me an account of Wilen & Gifford against Hector Davis for $418.34, due January 5, 1863, in Philadelphia. This account is sufficiently proved, and should be paid out of the estate of Hector Davis, deceased, and is herewith returned and marked "W. and G."

128 No proof of the claim of William P. Grace, of Pine Bluff, Arkansas, for about $2,000, mentioned in the statement of the executor of 20 May, 1868, has been produced before me.

After a careful examination and consideration of the accounts and statements heretofore reported by me, and the exception to said report, and the arguments of counsel made and the evidence adduced both before and since said report was made, I see no reason for restating or

changing any of the said accounts and statements, except in the particulars which I will now mention, as 1st and 2d, as follows:

1st. In my report of 18th of February, 1868, account "F," page 61, I reported as due by the estate to Sallie and Bettie Davis, (it should have been Jennie and Sallie and Bettie Davis,) on Hector Davis' guardian account on 1st Jan'y, 1863, a balance of principal of $5,269 24
with interest from 1st Jan'y, 1863;
subject to a credit on 1st April, 1866, of 800 00

$4,469 24

I made no calculation of the interest up to the 1st of April, 1866' when the $800 was paid. This claim should have been stated as I now report it, thus:

Principal due 1 Jan'y, 1863	$5,269 24
Interest to 1 April, 1866	1,027 50
	$6,296 74
1866, April 1st, by credit this day	800 00
" " " leaving balance due this day of	$5,496 74
with interest from 1st April, 1866, on	5,269 24
the portion thereof which is principal.	

I have not scaled this debt, because the balance due from Hector Davis, the late guardian, according to the account settled before Commissioner Fleming, on the 1st January, 1861, when there was no such currency as Confederate States treasury notes, was $4,999.90, and the payments by the guardian after that time were never equal, in any year, to the annual interest on the balance.

2nd. In my report of the 18th of February, 1868, in account "E," on page 58, I reported an open account due from R. D. James to the estate of Hector Davis, deceased, on the 1st of January, 1863, of $3,442 09
in confederate money, worth in gold 1,126 21

And in account "F," on page 61, I reported a balance due from the estate of Hector Davis, deceased, to R. D. James, on 31 December, 1862, in confederate money, $9,593.86, worth in gold, according to the scaling attached to the exhibit marked "W W," $5,760.13, with interest from the 31st December, 1862, on the said sum of $5,760.13.

129 I now think that I was wrong as to these two items; that the balance of $1,126.21 should go to the extinguishment as far as it will go of the claim $5,760.13, and that R. D. James should have no more of the said sum of $5,760.13 and the debt of $1,126.21 should be regarded as paid.

In response to the enquiries required of R. D. James, executor, by Mr. Lyons, I report, that the $2,960 paid by Henry N. Jones was applied by the executor to the debt due by said James to Hector Davis in their partnership account.

That the sum of $3,000 paid by Jones was applied by the executor to the debt due by Matthews & Jones to Hector Davis in their partnership accounts.

Both of these sums are credited to the estate of Hector Davis, one in

December, 1866, and the other in January, 1867. (See account "B" on page 39 in my report of 18 of February, 1868.)

That character of the business of the partnership of Jones with Davis, and of Matthews & Jones with Davis, was buying and selling negroes.

That the partnership of Hector Davis with Matthews & Jones commenced in the fall of 1858, or in 1859, and the partnership of H. N. Jones with Hector Davis commenced in the fall of 1860.

That the partnership embraced no real estate, but consisted entirely of bonds and negroes.

That L. W. Matthews, Henry N. Jones, and Hector Davis, and none others, composed the partnership known by the name and style of Matthews & Jones, and Henry N. Jones and Hector Davis, and none others, composed the firm or partnership known by the name and style H. N. Jones.

The executor has procured in the exhibit marked "X, X, X, X" the only books and accounts relating to these partnerships which were ever in his possession.

That the letter dated 28 Novem., 1866, and filed with answer of Ann Davis, on the 15th of November, 1869, and marked A. D., is in the handwriting of R. D. James, executor of Hector Davis, deceased.

Respectfully,

THOS. J. EVANS, *Commr.*

Deposition of A. R. Holladay.—Filed with Commissioner Evans' report of May 4th, 1870.

RICHMOND, *Jan'y 17th*, 1870.

DAVIS' EX'OR
v.
CROUCH AND ALS. } In the circuit court of the city of Richmond.

The deposition of A. R. Holladay, taken at the office No. 510 Franklin street, in the city of Richmond, on 17 Jan'y, 1870, to be
130 read before the commissioner in the execution of the decrees entered in this cause, upon interrogatories filed by James Lyons, esquire, counsel for the Crouches' heirs and Ann Davis.

Present, R. D. James, ex'or of Hector Davis; Andrew Johnston, counsel for Davis' ex'or.

A. R. Holladay, being first duly sworn, deposes and says:

1st interrogatory by Mr. Lyons. Are you one of the personal representatives of your father, Waller Holladay, dec'd, claiming in this cause from the estate of Hector Davis, dec'd, a debt said to be due by Hector Davis as the security for Henry Jones in bond given for the purchase of slaves?

Answer. I am one of his executors.

2d interrogatory by Mr. Lyons. Do you know where the said Jones now resides, and what is his pecuniary condition?

Answer. I have no personal knowledge of either fact, but I believe he resides in Grymes County, in the State of Texas. I understand his name is Henry N. Jones. I understood from him he had a valuable property in Texas, but I know nothing personally of his pecuniary condition.

(The answer to his pecuniary condition is excepted to by the counsel for the ex'or of H. Davis because it is hearsay.)

3d interrogatory by Mr. Lyons. Did he or not write one or more letters apprising you that he had remitted to R. D. James, the executor of Hector Davis, a sum of money in part payment of that debt? If he did, please produce the letters if you have them.

(This question is excepted to by the counsel of R. D. James, executor of Hector Davis, deceased, as calling for evidence not competent to be used against the plaintiff, R. D. James, executor of Hector Davis, deceased.)

Answer. Some considerable time after its date, I received the letter which I now produce. I received it through the Richmond post-office. (Mr. Holladay desiring to retain the original letter it is agreed that a copy of the letter may be returned with this deposition. It is herewith returned and marked "H. N. J., No. 1.") I addressed an answer to that letter to Henry N. Jones at Navasoto P. O., Grymes County, Texas, and sometime thereafter received another letter which I now produce, from Henry N. Jones, through the Richmond post-office. (Mr. Holladay desiring to retain the original letter, it is agreed that a copy of this letter also may be returned with this deposition. It is herewith returned, and marked "H. N. J., No. 2.") I received no other letters from H. N. Jones.

4th interrogatory by Mr. Lyons. Did you ever apply to the said James for payment of the said money? If you did, please state
131 his reply; and when you made the application; and whether you exhibited to said James the said letter or letters of said Jones?

Answer. After the receipt of the first letter I applied to Mr. R. D. James, the executor of Hector Davis, for payment of the sum due on the draft mentioned in the letter, and showed Mr. James the letter itself. The precise answer of Mr. James to the application, I, of course, cannot exactly remember, but the effect of it was this: He admitted that he had received the draft and gotten the money for it, but denied that he was required by the instructions of Mr. Jones to apply that draft in part payment of the bond executed by H. N. Jones and Hector Davis to the executors of Waller Holladay, but that he considered that he was authorized to apply it to a debt due from Jones to him, whether he meant due to himself individually or as executor, I can't say, and that he did so apply it. For these reasons he declined to pay the draft, or any part of it, to me on my application.

Cross-examined by Mr. Andrew Johnston, esq.:

1st question by Mr. Johnston. Do you not recollect that in that conversation, of which you have spoken, Mr. James said that there was an open account between the said Jones and Hector Davis on account of their copartnership, besides this bond; that Jones was indebted to said Davis, as the said James believed, about ten thousand dollars on the said open account, and that he had chosen to apply that three thousand dollars as a general credit in Jones' favor on partnership account.

Answer. I have no recollection of it. He may have said so, but I do not remember any of his statements in detail other than I have given. And further this deponent saith not.

ALEX. R. HOLLADAY.

Adjourned to Friday, the 21st of January, 1870, at 10 o'clock a. m., with leave to Mr. Lyons to re-examine Mr. Holladay if the thinks proper.

THOS. J. EVANS,
Special Commr.

H. N. J., No. 1.

GRIMES C'TY, TEXAS, *March 18th*, 1867.

Col. A. R. HOLIDY:

DEAR SIR: I paid Richard D. James a draft on J. C. & S. R. Smith & Co. three thousand dollars. It was paid when presented. The three thousand was to be paid on one joint note of mine, and Hector Davis' copartnership note. I am making every arrangement to pay all I can this next winter. I am in hopes you will compromis' a portion of
132 it, as we lost nearly all the negro's. It was an *i*ntire loss to us. We had a bad crop year and I collected but little. I am farming and working every way I can to pay my deb's, and will come to Richmond this fall or winter, and rais' all the means I can. I wo'ld *of* cal'ed on you, but le'rnt you w*a*re not at home when I was th*a*re. Show this letter to Richard D. James. I will rais' all the money I possibly can to pay when I come o*u*n.

Yours, respectfully,

H. N. JONES.

Tell James to write to me. I came very near being and rich when the war broke up, but I am working as hard as I can to pay my debts.

H. N. J.

Postmarked "Navasota, Texas, Mar. 19," and addressed to "Col. Alex. R. Holidy, Richmond, Virginia."

The foregoing is a copy of the letter (with postmark and address) referred to in the deposition of A. R. Holladay, taken before me 17th Jan'y, 1870, in Davis' ex'or and Crouch, &c., the original being retained by Mr. Holladay by consent of parties.

THOS. J. EVANS,
Special Commr.

H. N. J., No. 2.

NAVASOTA, GRIMES COUNTY, TEXAS,
Jan'y 27, 1867.

Mr. A. R. HOLIDY:

DEAR SIR: I received your letter and one from R. D. James. I paid him, or gave him a draft on a house in Galveston *the* for three thousand dollars, with the dir*r*ection for it to be paid to the Holidy note, which I hope he will do*e*, as I directed to be paid on that note when I gave him the draft, and he has collected the money last March. Mr. Holidy, I hope Mr. R. D. James will pay that three thousand dollar-, and have it credited on the note as paid by me, for I have his rece't that it is to be paid on our partnership not' or claim. I want to come on to Virginia this summer twelve months, and I hope your rel*e*tives will meet us on a concilia'ry term*e*s, as we have lost all that the negroes was sold for. We are nearly ruined in this country, and I fe'r I have lost ne'rly everything I have, but I w*a*nt to see you when I come o*w*n, and try and have some sort of compromise about it. It is my wish to act and do*e* *w*right in this mat'er if I ever have the mean*e*s.

Yours, respectfully,

H. N. JONES.

133 This was partnership note of min' and Hector Davis.

H. N. JONES.

Postmarked "Navasota, Texas, Jan. 31, and addressed to Mr. Alexander R. Holidy, Richmond, Virginia.

The foregoing is a copy of the letter (with postmark and address) referred to in the deposition of A. R. Holladay, taken before me, 17th January, 1870, in the chancery suit of Davis' Exor. v. Crouch, &c., in the circuit court of the city of Richmond.

THOS. J. EVANS,
Special Commr.

The original letter being retained by Mr. Holladay by consent of parties.

THOS. J. EVANS,
Comr.

I certify that the foregoing deposition was taken, sworn to, and subscribed before me at the time and place mentioned therein.

THOS. J. EVANS,
Spl. Comr.

1870, *January* 21*st*—10 o'clock a. m.

Present, R. D. James, executor of Hector Davis.

Adjourned to Wednesday, January 26th, 1870, at 10 a. m.

THOS. J. EVANS,
Special Commr.

1870, *January* 29—10 o'clock a. m.

Present, R. D. James, exor., Andrew Johnston, esq.

The deposition of N. M. Lee was taken in behalf R. D. James, exor., &c., and the case adjourned to Tuesday, the 1st day of February, 1870, at 10 o'clock a. m.

THOS. J. EVANS.

Depositions of N. M. Lee, R. D. James, and A. D. Williams.—Filed with commissioner's report of 4th May, 1870.

RICHMOND, *Jany.* 29, 1870.

DAVIS' EXOR.
vs.
CROUCH & ALS.

In the circuit court of the city of Richmond.

The following depositions were taken at office No. 510 Franklin street, in the city of Richmond, at the instance and on behalf of R. D.
134 James, exor. of Hector Davis, deceased, to be read in this cause before T. J. Evans.

Present, R. D. James, exor., Andrew Johnst on, esq.

N. M. Lee being first duly sworn, deposes and says:

1st question by Mr. Johnston. Do you know anything of a partnership between the late Hector Davis and Henry N. Jones? If yea, state when it commenced; who were the partners; what was their business; and what capital or property they had.

Answer. I know there was such a partnership. I think it existed as early as 1858. I cannot say with certainty when it commenced. The partners were Hector Davis, H. N. Jones, and man by the name of

——— Matthews, whose first name I do not remember. Their business was the purchase and sale of slaves. I do not know what capital they had invested; their property consisted of slaves and bills receivable, taken for the sales of slaves as far as I know.

2d question by Mr. Johnston. Where did the said Jones and Matthews reside? Where do they reside now?

Answer. When I first knew them, Jones resided in Halifax County, Va., and Matthews in the county of Brunswick, Va. They both moved to Texas a few years before the war, and reside there now, so far as I know. The last time I heard of them they were living in Texas.

3d question by Mr. Johnston. After the 1st of January, 1863, in what public stocks or bonds were investments generally made in the city of Richmond, Va.?

Answer. My observation was that they were generally made in stocks or bonds of the Confederate States government.

4th question by Mr. Johnston. Were or were not such investments frequently made by prudent and experienced business men of their own funds and property?

Answer. I think a majority of our most successful, prudent, and experienced business men made such investments to a great extent.

5th question by Mr. Johnston. What was the currency in general use in Richmond, Virginia, between January 1st, 1863, and April 3d, 1865?

Answer. Confederate States treasury-notes exclusively.

6th question by Mr. Johnston. When sales of slaves, bank stocks, and insurance stocks were made during that period, for what currency were they sold, and in what currency were they paid for?

Answer. In Confederate States treasury-notes.

7th question by Mr. Johnston. Would it have been practicable during that period to have made such sales for specie or for United States currency?

Answer. I do not think it would.

135 8th question by Mr. Johnston. Will you look at the account "E" of the assets of Hector Davis' estate, returned with the report of Comr. Evans of the 18th of February, 1868, and state which of the debtors therein named were residents of the State of Virginia at the time of Hector Davis' death?

Answer. Francis E. Luckett was dead, but had been a resident of Chesterfield County, Virginia; John F. Davis, John C. Reese, Geo. M. Lofland, G. M. Catterton, Lew. Jones, W. J. Shumate, J. J. Whitehurst, J. H. Speers, George D. Pace, Fred. Sheffer, Wm. P. Davis, Lee & Bowman, Dr. A. F. Picot, John Gammell, Isaac A. Goddin, John C. Page, jr., J. J. Farish, John Rucker, Danl. L. Crigler, George W. Cooper, Ro. Blake, Abram Sheppard, Martha E. Davis, Ro. N. Trice, Wm. S. Dupree, Wells & Davis, Joseph Liggon, Grayson & Gibson, John W. Wells, Henry J. Wale, S. & J. Stein, Reuben Ragland, A. S. Grigsby, A. S. Grigsby & Co., Clarke & Sedgwick, B. F. Wilson, Lee, Wilson & Co., Wm. E. Rose, Wm. L. Fleming, E. B. Marshall, Bord & Hirsh, Joseph H. Crenshaw, Henry Newman, J. D. Powers, John B. Smith, Powers & McKinney, Brightwell & Peters, John F. Moses, John Jenkins, P. M. Tabb & Sons, Thos. C. Bunting, Steins & Newman, J. M. Shelton, Henry Tate, Wm. Goode, jr., George Watt & Co., Virginia Ann Isham, W. W. Robinson, J. R. Grigsby, Mrs. M. B. James, B. H. Shackleford, —— Maddox, John Poe, jr., J. Boisseaux, Julius Harrison, Bob Alvis, Owens & Miles, A. Smith & Co., C. C. Moore, Fayette Williams, S. M. & R. Bowman, Wm. A. Branton, Clifford Cabell, L. B. Dog-

get, Franklin Matthews, L. Hirsh, Wm. C. Moncure & Co., Benjamin Rose, John N. Davis, John A. Hutcheson, R. D. James, N. M. Lee & Co., —— Hubbard, Thos. M. Jones, sr., and N. M. Lee were residents of Virginia at the death of Hector Davis. The other debtors in account E were non-residents of the State of Virginia at the death of Hector Davis, so far as I know.

9th question by Mr. Johnston. What were your means of knowledge as to the residence and non-residence of said debtors?

Answer. I had almost entire management of Hector Davis' business from the spring of 1862 to 1st January, 1863, and was very familiar with all the names and residences of persons on his books.

10th question by Mr. Johnston. From the 1st of January, 1863, up to the present time, has there, or not, been great difficulty in the collection of debts contracted before and during the war by reason of the laws commonly known as the stay laws in Virginia?

Answer. There has been great difficulty.

11th question by Mr. Johnston. Was there, or not, practically, during the war and since, almost an entire suspension of proceedings for the collection of such debts?

Answer. There has been. In the early part of the war, nobody wanted to pay; later in the war, nobody wanted to collect in confederate money; and since the war, nobody has paid who could prevent it.

136 12th question by Mr. Johnston. If the executor of Hector Davis had brought suits against those who were reported as debtors, and who were residents of Virginia, do you think it would have been for the advantage of the estate, comparing the expense of such suits with the collections that would probably have been realized?

Answer. From my examination of the aforesaid account E, I don't think it would; I don't think much could have been realized.

13th question by Mr. Johnston. From your acquaintance with Hector Davis' business, do you believe that all the balances on his books against the persons named in the account E were real subsisting debts? If not, why not?

Answer. I do not believe that many of them were recognized as existing debts, either by Mr. Davis or by the debtors. I refer to balances on the books, and not to bills receivable. Mr. Davis was in the habit of making advances to persons who left negroes with him for sale, and if, after the sales, there were small balances in his favor, it was generally *not* his custom not to demand the payment of these small balances, although they stood on his books. He was a very liberal man in his dealings with his customers.

14th question by Mr. Johnston. If the executor of Hector Davis had undertaken to collect by suit in other States the debts appearing to be due from non-residents, do you think it would have been advantageous to the estate, weighing the expense of such proceedings against the collections that would have been realized?

Answer. I do not think it would have been advantageous to the estate in the general result.

15th question by Mr. Johnson. Why not?

Answer. Discretion in this case would have been necessary, as in all other cases. From consultations with Mr. James, the ex'or, and the references I gave him, I am satisfied he did all that a prudent man should have done to collect these debts. Nearly all the debtors lived in the Southern States, and the debts grew out of contracts about slaves.

The difficulties in the enforcing of such debts in the Southern States have been as great as in Virginia.

And further this deponent saith not.

N. M. LEE.

Adjourned to Tuesday, the 1st of Feb'y, 1870, at 10 o'clock a. m.

THOS. J. EVANS.

FEB'Y 1ST, 1870.

Present, R. D. James and Andrew Johnston.

R. D. JAMES, being first duly sworn, deposes and says:

1st question by Mr. Johnston. Why did you not make investments of the assets of Hector Davis' estate in bonds of the State of Virginia?

137 Answer. Because I thought they sold too high, as compared with other stocks and the currency.

2nd question by Mr. Johnston. Why did you not purchase Virginia State bonds for the legacy of $20,000 left to Ann Davis?

Answer. A short time after my qualification as the executor of Hector Davis, deceased, I received a notice from Thomas T. Giles, receiver of the Confederate States under the sequestration acts of the confederate congress, to make no disposition of the legacy of the $20,000 bequeathed to Ann Davis by the will of Hector Davis, deceased; that he would take steps to sequestrate the legacy of $20,000 as the property of alien enemies, Ann Davis and her children being residents of the State of Pennsylvania. That notice was never withdrawn by the receiver, and during the progress of the war Virginia State bonds so much appreciated, as compared with currency, that I did not think it wise or prudent to make the investment, even if the sequestration proceedings had thrown no impediment in the way. Under the circumstances, I made what I meant and intended to be temporary investments of the confederate money I had on hand in confederate bonds. I made these temporary investments from time to time.

3d question by Mr. Johnston. What were the terms of the partnership between Hector Davis and yourself under the firm of Hector Davis, by reason of which you claim to be a creditor of his estate?

Answer. Hector Davis agreed to give me one-fourth of all the commissions arising from the sales of negroes, for my services, after deducting the expenses of carrying on the commission and auction business.

4th question by Mr. Johnston. Was there any partnership between you in the purchase and sale of slaves, or any other business in which the concern might have made profits or incurred losses?

Answer. None whatever.

R. D. JAMES.

A. D. WILLIAMS, being first duly sworn, deposes and says:

1st question by Mr. Johnston. State your residence and occupation in the year 1861, and down to the present time.

Answer. Richmond City, Va. Real-estate agent and occupation.

2d question by Mr. Johnston. Please state what was the currency in general use in Richmond, Va., from the 1st of January, 1863, to the 3d of April, 1865.

Answer. The only currency in use in that time in Richmond, Va., was Confederate States treasury notes.

3d question by Mr. Johnston. During that period in what public stocks or bonds were investments generally made in the said city?

Answer. The bulk of investments were made in Confederate States bonds.

4th question by Mr. Johnston. Were or were not such investments of their own funds and property frequently made by prudent and experienced business men during that period?

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Answer. They were so made, to a very large extent, by the most prudent and experienced men.

5th question by Mr. Johnston. When sales of slaves, bank stocks, and insurance stocks were made during that period, for what currency were they sold, and in what paid for?

Answer. They, and every other species of property, were sold for and paid for in Confederate States treasury notes, because, as before stated, that was the only currency in use at that time.

6th question by Mr. Johnston. Would it have been practicable, during that period, to have made such sales for specie, or for United States currency, in Richmond?

Answer. I do not know that it would have been; certainly no person within my knowledge deemed it judicious or proper to attempt to make a sale upon those terms.

7th question by Mr. Johnston. During that period, in what stocks or bonds were investments generally made by fiduciaries under the sanction of the courts?

Answer. Almost universally made by order of the courts in Confederate States stocks or bonds. I never knew them made in anything else.

And further this deponent saith not.

A. D. WILLIAMS.

I certify that the foregoing depositions were taken, sworn to, and subscribed before me at the times and place mentioned therein.

THOS. J. EVANS,
S. Comr.

Deposition of R. D. James, in answer to the interrogatories filed by Mr. Lyons.—Filed with commissioner's report of 4th May, 1870.

RICHMOND, *Feb'y 1st*, 1870.

DAVIS' EX'OR
v.
COUCH & ALS. } In the circuit court of the city of Richmond.

The examination of R. D. James, executor of Hector Davis, deceased, taken upon the written requisition of James Lyons, esq., counsel for the devisees, filed in this cause on the 21st of January, 1870.

Present, R. D. James, executor of Hector Davis, dec'd.
" Andrew Johnston, counsel for R. D. James, ex'or.

R. D. JAMES, being first duly sworn, deposes and says:

1st question. To what debt and when did you apply the money paid by Jones, according to the admission of yourself, to Mr. Holladay?

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Answer. The money was applied to the debt due from H. N. Jones to Hector Davis in their partnership accounts. On the 10th of December, 1866, Henry N. Jones paid me $2,960 in cash, and gave me a draft for $3,000 on J. C. & S. R. Smith & Co., for which I

gave him two receipts, and I now file copies of these receipts, which copies I made at the time, (marked "X, X, X.") These receipts explain for what debt the money was paid by Jones. The draft was collected by me when it fell due, in January, 1867. Both of these sums ($2,960 and $3,000) are placed to the credit of H. N. Jones and to the credit of Hector Davis' estate in my account, page 39, reported by Commissioner Evans on the 18th of February, 1868, and filed in this cause on the 5th of March, 1868.

The $2,960 was applied to the payment of balance in full of amount (principal and interest) due from the firm of Matthews & Jones to Hector Davis for capital furnished the firm by Davis, with the understanding that the profits were to be afterwards accounted for.

The $3,000 were applied to the payment of partnership accounts between Jones and Davis.

The partnership accounts of the firm of Matthews & Jones and of the firm of H. N. Jones (of both of which firms Hector Davis was a member) have never been settled up, and therefore the profits or losses have never been ascertained. I could not settle these firms up and ascertain these profits or losses since the death of Hector Davis, because I had not the material with which to do so. Jones was the only man (Matthews having died during the war) that could so wind up the business of these two firms, and ascertain the profits or losses. Jones carried a number of negroes to the South for sale, belonging to the firm of H. N. Jones, for which he has as yet made no returns. Among the slaves so carried to the South for sale, were the sixteen slaves bought by the firm of H. N. Jones, from the executors of Waller Holladay, and for which the bond now held by Mr. Holladay was given.

2d question. What was the character of the partnership of Jones with Davis?

Answer. The character of the business of the partnership of Matthews & Jones, and of H. N. Jones, was buying and selling negroes.

3d question. When did these partnerships commence?

Answer. The partnership of Matthews & Jones commenced in the fall of 1858, or in 1859, I think, and ended in the fall of 1860. The firm of H. N. Jones commenced in the fall of 1860, and is not yet wound up; nor has the business of Matthews & Jones been wound up.

4th question. What property, real and personal, did these partnerships embrace?

Answer. They embraced no real estate, only negroes and bonds. The bonds and negroes were held by Jones. None of the assets of these firms ever came to my hands, except the $2,960 and the $3,000 which Jones paid to me, as I have before stated.

140 5th question. Were there any other partners?

Answer. None. L. W. Matthews, Henry N. Jones, and Hector Davis composed the firm of Matthews & Jones. Henry N. Jones and Hector Davis composed the firm of H. N. Jones.

6th question. Will you produce all the books and accounts relating to the partnership?

Answer. I have not and never had the partnership books and accounts of Matthews & Jones, or H. N. Jones. There was an account of each of these firms with Hector Davis on the books of Hector Davis. I now produce these books to the commissioner, from which these accounts have been copied, and now file with commissioner copies of these accounts, marked "X, X, X, X."

If there were any partnership books and accounts of these firms, I presume Henry N. Jones has them.

7th question. In whose handwriting is the letter dated 28th November, 1866, and filed with the answer of Ann Davis on the 15th November, 1869, and marked A. D.?

Answer. It is in my handwriting. I wrote it and sent it to her. And further this deponent saith not.

R. D. JAMES.

I certify that the foregoing deposition was taken, sworn to, and subscribed before me at the time and place mentioned therein.

THOS. J. EVANS, *S. Commr.*

Exhibit X. X. X. with deposition.

[Duplicate.] RICHMOND, *Dec.* 10, 1866.

Rec'd of H. N. Jones a draft on J. C. & S. R. Smith & Co. for the sum of three thousand dollars; said amount to be applied to the payment of partnership acct's himself and Hector Davis, dec'd.

R. D. JAMES,
Ex'or of Hector Davis, dec'd.

[Duplicate.]

Rec'd this day of Henry N. Jones, surviving partner of the firm of Matthews & Jones, consisting of L. W. Matthews, Henry N. Jones, and Hector Davis, equal partners in profits, the sum of ($2,960) twenty-nine hundred and sixty $\frac{80}{100}$ dollars, being balance in full of amount due said Davis for capital furnished the firm. Profits made by the concern, it is distinctly understood, ar' to be accounted for when accurately understood.

R. D. JAMES,
Ex'or of Hector Davis, dec'd.

Returned with commissioner's report of May 4, 1870.

141 *Note for Commr. Evans.*

1. Mr. James has sworn that he was a partner of Hector Davis, and claims a certain sum due to him as his share of the profits. (If there were written articles, I require him to produce them.)

2. He now says, as I am told, that his interest in the partnership was commission upon the profits.

3. He claims that his comm'n shall be paid in gold.

Reply.

1. No matter under what name he took or claims his share of the profits, the fact that he takes a share of the profits makes him a partner, if it be a share of nett profits, because that makes him responsible for losses necessarily. (Story on Partnership, sections 34, page 53, note 3 and 4; sections 35, 36, note 2.)

2. Being entitled to a share of the profits, it is a conclusion of common sense and common honesty, too plain to admit of argument, that he must take the profits actually made, whether it is in horses, cows, mules, money, or paper; otherwise his copartner, whose interests are equal to his, would call upon him to make good his profits in gold, and ruin him.

3. If not partner, he was an agent on comm'n it is said. Every part-

ner is an agent of the partnership, but no partner is entitled as such to a comm'n, but every agent must take his pay or comm'n in the money he collects, otherwise this strange conclusion would follow:

An attorney-at-law collects $10,000 in greenbacks, when they are 20 per cent. below par, for a stipulated comm'n; he must take his comm'n in greenbacks; and no attorney would hazard his reputation as an honest man, as well as lawyer, by offering to pay his client in greenbacks and himself in gold. The question is too plain to discuss. The attorney who would make the demand must be a fool as well as a knave.

Respectfully submitted.

JAMES LYONS.

FEB'Y 23, 1870.

Returned with commissioner's report of May 4, 1870.

Note for the executor, March 7th, 1870.

On reviewing the record of these cases, we do not think it necessary to add to it by repeating what has been already urged on behalf of the executor, since it does not appear to us that any substantial answer has been made to our views in the various exceptions and notes of Mr. Lyons.

But we request the attention of the commissioner—

1. To the bill filed in the 2d suit, 10 Nov., 1865, in which there is a brief but comprehensive statement of the difficulties which
142 beset the ex'or, and the events which resulted in the great diminution of the estate. All the facts therein stated are amply supported by the proof.

2. To the report of Commr. Evans, of 18th February, 1868, in the 1st suit, and the documents which accompany it.

3. To the notes on the part of the ex'or in both suits of 20th May, 1868, and to the note of his counsel in ditto of 23d June, 1868.

If any proof had been wanting in the cause on the part of the executor, it has been fully supplied in the testimony recently taken.

1. In the first place, it is shown that by far the greater part of the debts—appearing to be due from different persons to Hector Davis from his books—were due, if at all, from residents of other States, for which the ex'or was not accountable; that by reason of the stay-laws, and the general dislocation of *of* public affairs, suits would generally have proved unavailing, and have resulted in loss to the estate; that many of the apparent debts were not really such, and that the executor did all that a prudent man should have done under the circumstances for the benefit of the estate.

(See the whole of N. M. Lee's deposition, and especially answers to questions 8, 9, 10, 11, 12, 13, 14, and 15.)

2. That from the 1st January, 1863, the only currency in the city of Richmond was that of the Confederate States, in which only could debts be collected, and for which only could sales be made of slaves, stocks, or other property; that almost all investments after that time were made in Confederate States bonds; that such investments were commonly made by the most prudent, experienced, and successful business men, and were also commonly made by fiduciaries, under the sanction of the laws and the courts.

(See N. M. Lee's deposition, answers 3, 4, 5, 6, and 7, and A. D. Williams' whole deposition.)

3. That Henry N. Jones and Hector Davis were partners in the buy-

ing and selling of slaves, including the very slaves for which the bond was given to Holladay; that Davis was therefore an original debtor to Holladay, though in form a security on the bond; that consequently the ex'or could not have availed himself of the right of a surety to require Holladay to sue Jones, even if Jones had resided here; but that in fact Jones resided in Texas, and still resides there, and consequently Holladay could not have been required to seek him there.

(See deposition of N. M. Lee, answers 1, 2; deposition of R. D. James, in answer to Mr. Lyons' interrogatories, especially 1st question and answer.)

4. That the two sums of money received from Jones by the ex'or were not received, as alleged by Jones, to be applied to the Holladay debt, but were received to be applied to the credit of Jones, and of Matthews & Jones, in their accounts as partners with Hector Davis; and that they have been already accounted for by the ex'or, and charged to him in the accounts already taken and reported in this cause.

143 (See the deposition of R. D. James in answer to Mr. Lyons' interrogatories, 1st question and answer, and copies of receipts annexed.)

5. That the ex'or has never been in possession of any property of the Jones & Matthews partnerships, nor of the books or other materials for settling these accounts, but these were always in the hands of Matthews (who is now dead) and Jones, and both of them resided in Texas, and neither of them ever made any settlement.

(See R. D. James' deposition in answer to Mr. Lyons' interrogatories, and deposition of N. M. Lee, answers 1 & 2.)

6. That the executor has no books or papers in his possession relating to Jones, &c., except the accounts of Matthews & Jones and H. N. Jones, on the books of Hector Davis, which he produces to the comr., and of which he files copies taken by the commr., which support his deposition.

(See R. D. James' deposition in answer to Mr. Lyons' interrogatories, and copies of accounts filed.)

7. That he was at first prevented from making investments in bonds of the State of Virginia, because he thought the prices too high in reference to the money of the time and other values; and that he was soon after prohibited to do so by notice from the authorities of the Confederate States under the sequestration laws; for which reason he made investments in Confederate States bonds, intended only as temporary investments, but which he was nevertheless authorized to make by the authority of the laws and the courts, and by the example of prudent and experienced men, as already shown.

(See separate deposition of R. D. James on these subjects, answers 1 & 2.)

8. That his own partnership with Hector Davis was merely this: Davis was to give him one-fourth of the commissions arising from the sales of negroes, for his services, after deducting the expenses of the business, and that there was no partnership business between them, in which profits could have been made or losses incurred.

(See separate deposition of R. D. James, answers 3, 4.)

This concurs with the testimony on the subject taken heretofore, and referred to by the commissioner in his report of 18th February, 1868, when treating of the claim of R. D. James as a creditor of the estate.

(See "claims W W," No. 19, and assetts V V, No. 18, and Elmore's depo., page 18, cross questions.*)

page 21, qu. 17 & 18, J. E. Goddin. { *Cross-question 4, 5, 6, 7, page 8, quest. 10 and James E. Goddin's deposition. The credit, $3,442.09, spoken of by Goddin, is commuted into $1,126.21, and reported as a good debt, acc't E. } last item, page 58.

144 As Mr. Lyons has filed a note, with reference to authorities, in relation to this debt, we will conclude with a reply to that note. (See note at the end of this paper.)

The facts of the case as between the ex'or and the estate of Hector Davis, in respect of the claim of the executor as a private creditor of Hector Davis in his life-time, are as follows:

Hector Davis carried on the business of selling slaves upon commission. This was a separate and distinct business from all his other business. It was one in which no capital was embarked and no losses could occur. It was conducted in his own name alone. The proceeds of the business consisted entirely of commissions on sales, which were under his own control.

Hector Davis employed R. D. James in this business as his assistant; whether he called him partner or not is immaterial. His compensation was to consist of a portion of the commissions, not of profits, and it was only another form of giving him a salary; making the amount contingent on the business done, with the obvious purpose of interesting James in the success of the business and stimulating his attention to it. It is a very questionable point whether such an arrangement as this constituted a partnership in the eye of the law, even as to third persons. But clearly it does not as between the partie sthemselves, who occupy, in fact, the relative positions of principal and agent.

This whole subject is well developed by the author to whom Mr. Lyons refers, but to whom he refers, as we respectfully submit, for authority in a totally different class of cases.

In Story on Partnerships, beginning at section 30 (§ 30), the discussion is commenced and continued up to section 51. Without attempting to follow the author through the whole of it, we ask the attention of the commissioner to a few sections which are more especially applicable to this case:

Sec. 32 (and the case of Hazard v. Hazard,) 1 Story's R., 391, quoted in note 3 to that section, where it is said, "If A agrees to give B one-third of the profits of a particular transaction in business for his labor and services therein, that may make both liable to third persons as partners, but not as between themselves. This was the very point adjudged in Herbeth v. Blanchard, (4 East, 144,) when Lord Ellenborough said, 'the distinction taken in Waugh v. Carver & als. applies to this case. Quoad, third persons, it was a partnership, for the plaintiff was to share half the profits; but, as between themselves, it was only an agreement for so much, as a compensation for the plaintiff's trouble and for lending R. his credit.'"

And in accordance with these precedents, the case of Hazard v. Hazard was decided. The note refers also to other cases supporting the doctrine. (See also sec. 33, 34, &c.; sec. 38 and note 1; sec. 41, 42, 43, and notes.)

These authorities leave no doubt that in this case, whatever
145 might be held as to a partnership, if third persons, having claims against the business, insisted upon it, there is no reason to regard James as a partner as between himself and Hector Davis. He is merely

an agent employed by a principal, and to be paid a share of the commissions as compensation for his labor and services, (not profits, but commissions.)

Nor can the case be varied because of his calling himself a partner. The facts are disclosed, and it is for the commissioner to determine their legal effect and the rights of the parties arising therein. The denial of a partnership by James would not avail him if the evidence proved its existence; nor will his mistake as to the legal effect of the facts, when he affirms the partnership, of any greater force. The substance of the transaction is, that the parties were in fact principal and agent, employer and clerk.

The commissions all went to the credit of Hector Davis himself. James' proportion of them was placed to his credit on Davis' own books. It was competent certainly for Davis to have tendered payment, or for James to have demanded it. It suited them both to let the balance stand as it was so long as Davis lived. At the time of his death it was a valid, subsisting debt, due from him to James individually, and evidenced by the account on his books. The amount and value of the debt was to be scaled and estimated as in other and similar cases, and James was just as much entitled to refuse payment in Confederate States treasury notes as any other creditor of Davis' estate.

JOHNSTON & WILLIAMS,
For Davis' Ex'or.

NOTE.—The references to the commr.'s report of 18th Feb., 1868, and the testimony filed therewith in relation to the claim of R. D. James, as an individual creditor, made on the 4th page of this note, are somewhat confused. They are intended to be as follows:

Debt due to R. D. James, account F, page 61 of report, commuted at $5,760 13
Credit thereon, account E, p. 58, reported as "good," last item, page 58 ..... 1,126 21

Bundle of "claims, No. 19," reported with report of 18th Feb'y, 1868, "account W W."

Bundle of "assetts, No. 18," 1868, "account V V."

Elmore's deposition, page 8, quest. 10; page 18, cross-question 4, 5, 6, 7.

James E. Goddin's deposition, page 21, question 17 and 18, the credit of $3,442.09, spoken of by him, is commuted into $1,126.21; report, p. 58.

JOHNSTON & WILLIAMS,
For Davis' Ex'or.

146 Exceptions of plaintiff to commissioner's report of May 4th, 1870, returned with said report.

I, R. D. James, ex'or of Hector Davis, by his counsel, excepts to so much of the said report as reverses the former decision of the commissioner in relation to the debt of $5,760.13, due on open account from the estate of Hector Davis to the said R. D. James, on the 1st January, 1863, from which was to be deducted the sum of $1,126.21 due from James to Davis. (See the report of 4th May, 1870, page 6, and references there made.)

For the grounds of this exception the court is referred to the note of James' account of 7th March, 1870, returned with the commissioner's

report of 4th May, 1870, pages 4, 5, 6, 7, and 8, and to the references therein made. It is insisted that the former decision is correct, and that the ex'or should be entitled to rank as a creditor of the estate, as reported by Comr. Evans in his report of 18th February, 1868, account "F," page 61.

II. As to the investments in confederate bonds, and the special statements "A A" and "C C," reported at the request of Crouch's counsel, disallowing them, the court is referred to the same note of 7 March, 1870, and the other notes therein referred to of 20 May, 1868, and 23d June, 1868.

The position taken by Crouch's counsel in the note of 8th June, 1870, is surely untenable.

Under the sanction of an act of assembly, the court, exercising a jurisdiction and discretion expressly conferred upon it, authorized the investments.

The executor, in conformity with this authority, made the investments, as other of the best judgment and capacity of our business men were doing with their own funds. Without any allegation, much less proof, of any negligence or want of judgment, and in despite of the act of assembly and the authority given by the court, it is sought to charge the ex'or with a devastavit, and this for no other reason than that he had availed himself of the privilege conferred by the law and almost invited by the law, of asking the opinion and sanction of the court for such investments.

Argument cannot make more plain the unsoundness and injustice of such an attempt.

III. For the other points involved we refer to the notes of argument already mentioned.

JOHN O. STEGER,
ANDREW JOHNSTON,
Counsel for Davis' Ex'or.

13 JUNE, 1870.

148 *Matthews & Jones in account with Hector Davis.*

		Dr.	Cr.
1859.			
July	30.	To cash paid for medicine and syringe for negro	1 75
Aug.	3.	To cash loaned them to send Sneed	153 75
	4.	To cash loaned Mrs. Jones	60 00
	5.	To cash paid Dr. Cabell for attending Minty	6 00
	2.	To cash paid purchase girl Paulina	1,020 00
	2.	To cash paid purchase man Stephen and girl Florinda	2,555 00
	2.	To cash paid purchase man Henry	960 00
	3.	To cash paid purchase man Reuben	1,250 00
	"	To cash paid purchase boy William	1,250 00
	4.	To cash paid purchase girl Hester Ann	1,115 00
	"	To cash paid purchase man Jacob	1,365 00
	12.	To cash paid John W. Starke & Co. for purchase of boy George	1,215 00
	"	To cash paid jail acct. for board of negroes	86 70
	"	To cash paid them, $20 and $10	30 00
	13.	To cash paid them	280 80
	"	To cash loaned them	250 00
	9.	To cash paid purchase girl Becky	985 00
	"	To cash paid purchase Judy	1,065 00
	"	To cash paid purchase boy John	1,220 00
	10.	To cash paid purchase boy John	1,170 00
	11.	To cash paid purchase boy Arrood	1,455 00
	"	To cash paid purchase boy Paul	1,370 00
	"	To cash paid purchase boy Edward	1,380 00
	"	To cash paid purchase boy Bob	1,400 00
	"	To cash paid purchase boy Henry	910 00
	"	To cash paid purchase girl Fanny	1,300 00
	12.	To cash paid purchase boys Joe and John	2,665 00
			26,518 20
	13.	To balance per contra carried forward	$16,471 70

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1859.			
Aug.	13.	To balance brought forward	16,471 70
		To jail account	9 36
Oct.	7.	To purchase of boy William	965 00
		" boys Henry and Jim	2,700 00
		" " Andrew and Zack	1,885 00
Novem.		" " Eldred	1,415 00
	15.	" " John	1,375 00
		" " Patrick	1,375 00
	18.	" " Ned	1,585 00
		" " Scott	1,555 00
	24.	" man Anthony	1,290 00
	23.	" girl Sally	1,050 00
	28.	" " Catherine	810 00
	30.	To paid for shoes for William	1 25
Dec.	3.	" baggage-wagon	25
	1.	To purchase girl Julia	1,275 00
	16.	To cash loaned Jones in N. C. funds	1,500 00
		To cash paid Dickinson, H., & Co. for Lotty	1,155 00
	10.	" " Jordon	1,205 00
	5.	" for purchase man Floyd	1,500 00
		" " boy Daniel	1,375 00
	6.	" " girl Nannie	1,085 00
		" " " Lucretia	945 00
		" " boy Allick	1,240 00
	7.	" " woman Mina	500 00
		" " man Charles	1,415 00
	9.	" " girl Almeda	1,050 00
		" " man Humphrey	1,150 00
		" " girl Nancy	1,435 00
	14.	" for their note due 13-16 last, handed to Jones	1,182 48
		" N. M. Lee & Co. for amount of their board-bill	171 40
	14.	" order in favor of A. Moses	30 00
		" Dickinson, H., & Co. for Hester	1,100 00
		To amount carried fo'ward	51,801 44

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1859.

Aug.	2.	By cash of them		2,600 00
	6.	By cash of them		7 146 50
	8.	By cash of them in S. C. funds		300 00
Aug.	13.	Amount to balance		16,471 70
				$26,518 20

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1859.

Sept.	15.	By E. B. Nichols & Co.'s draft on Pierce & Brown, of Boston, at 60 days from the 1st instant		452 26
Oct.	7.	By enclosed check on N. Y	2,317 97	
		Premium	5 79	
				2,323 76
	15.	By E. B. Nichols & Co.'s draft on Pierce & Brown, of Boston, at 40 days from 24th Septem		1,721 06
	18.	By cash of Lee, sale of boy Andrew	1,000 00	
		By " " " Zack	1,000 00	
				2,000 00
Nov.	5.	By enclosed by E. B. Nichols & Co., check on N. Y	2,977 12	
		Premium	7 44	
				2,984 56
	7.	By cash of Davis & Co. for sale of boy William	990 00	
		By premium on 2 drafts on Boston: 452 26; 1,721 04 = 2,173 20	5 43	
				995 43
	17.	Enclosed by W. J. Hutcheson, check on N. Y	1,307 83	
		Premium	3 27	
				1,311 10
Dec.	3.	By check on New York	2,967 56	
		" "	7,500 00	
		" "	2,591 95	
		" "	714 63	
		" "	796 00	
		" "	4,427 86	
		" "	997 50	
			19,995 50	
		Premium	49 99	
				20,045 49
	12.	Nett proceeds of two drafts on Nichols & Co., one dated 26th Novem'r, and payable 15th Feb'y next	600 00	
		And the other payable 1 March next	600 00	
			1,200 00	
		Discount	153 00	
				11,847 00
		By amount carried forward		43,680 66

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1859.				
Dec.	14.	To amount brought forward		$51,801 44
		To cash paid Dickinson, H. C., for Jno. Morton		1,015 00
	15.	To cash loaned them		50 00
		To cash paid Jones		976 78
	14.	" for purchase of man Andrew		1,250 00
		" " boys Frank, Phil, and George		4,050 00
		" " girl Eliza		1,020 00
	16.	" " man Jacob		1,950 00
	17.	" " girl Milly		1,175 00
1860.				
Feb'y	8.	" " —— Leatha		1,175 00
	9.	" " man Cyrus		1,500 00
		" " man Runn		1,510 00
		" " man Jim		1,420 00
	10.	" " boy Joe		1,455 00
		" " girl Lucy		1,220 00
		" " boy Bill		760 00
	18.	" N. M. Lee & Co., for girl Milly		1,425 00
	18.	" for bread, bacon, &c		17 94
		" Kent, Paine & Co., for blankets		20 00
		" gave Turner, to pay expenses on negroes		100 00
	14.	To cash paid for purchase of girl Ellen		1,425 00
		" " woman Eliza		585 00
		" " woman Katy		1,225 00
	15.	" " man Tom		1,575 00
		" " man Ransom		1,405 00
		" " man Henry		1,450 00
	16.	" " girl Phœbe		1,155 00
		" " girl Ann		1,400 00
	17.	" " boy Lawson		1,335 00
		" " boy Green		1,020 00
		" " gal Mary		900 00
		To amount carried forward		$87,366 16

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1860.				
Feb.	17.	To amount brought forward		$87,366 16
		Cash paid for purchase of gal Adeline		800 00
	30.	" N. M. Lee & Co., for board of negroes		33 30
		" railroad fare on negroes and wagon		446 50
	29.	" for clothing for Leatha		5 00
Mar.	6.	" Turner balance of expenses		115 60
	13.	" R. P. Turner this amount for services		20 00
	16.	" N. M. Lee & Co., for purchase of boy Henry		1,160 00
		" ditto for purchase of girl Mary		1,175 00
		" " for purchase of girl Ann		1,275 00
	17.	" for bread, bacon, buckets, &c		10 25
		" Wingfield to pay for tickets to New Orleans		283 50
		" from N. O. to Galveston		60 00
		" for baggage-wagon		75
		" Jno. D. Fronderant & Bro., for purchase of woman Fanny		925 00
	15.	" for purchase of boys William, John, and Billy		3,200 00
	16.	" for purchase of man Bob		1,545 00
		" for purchase of boy Edward		820 00
		" for purchase of man Dick		1,185 00
		" for purchase of girls Rebecca and Minta		2,300 00
	17.	" N. M. Lee & Co., for board of negroes		4 50
	24.	" baggage-wagon		50
Apl.	3.	" S. Omohundro bal. of due-bil		831 60
	13.	" McMurry		60 00
				$103,622 66
		To balance per contra carried forward		18,452 44

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1860.

	By amount brought forward			43,680 66
Jan'y	2. By draft on them of this date, at 10 days after sight			700 00
	28. By enclosed by E. B. Nichols & Co.'s check on New York for		$9,315 00	
	Premium		23 29	
				9,338 29
Feb'y	9. By enclosed by E. B. Nichols & Co.'s check on New York for		2,872 82	
	Premium		7 18	
				2,880 00
	13. By enclosed by E. B. Nichols & Co.'s check on New York for		705 24	
	Premium		1 76	
				707 00
	By enclosed by Wm. J. Mathews' check on New York for		1,906 87	
	Premium		4 77	
				1,911 64
	By enclosed check on N. Y		2,046 87	
	Premium		5 12	
				2,051 99
	15. By enclosed by E. B. Nichols & Co.'s check on New York for		918 71	
	Premium		2 80	
				921 51
	By enclosed by E. B. Nichols & Co.'s two checks on New York for	1,285 41		
		2,992 50		
			4,277 91	
	Premium		10 69	
				4,288 60
	18. By cash of Lee for sale of girl Mary			950 00
	20. By enclosed by E. B. Nichols & Co.'s check on New York		399 00	
	Premium		1 00	
				400 00
	29. By enclosed two checks on New York	732 32		
		300 00		
			1,032 32	
	Premium		2 58	
				1,034 90
Mar.	10. By enclosed by E. B. Nichols & Co.'s check on New York for		510 86	
	By premium		1 27	
				512 13
	By amount carried forward			$69,376 72

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1860

Mar.	5. By amount brought forward			$69,376 72
	10. By enclosed by E. B. Nichols & Co.'s check on New York		753 51	
	Premium		1 88	
				755 39
	13. By enclosed by E. B. Nichols & Co.'s 2 checks on New York	1,068 63		
		3 97		
			1,587 27	
	Premium		3 97	
				1,591 24
	19. By enclosed by E. B. Nichols & Co.'s check on New York		490 05	
	Premium		1 22	
				491 27
	21. By enclosed by Wm. J. Hutchen's check on New York		477 71	
	Premium		1 19	
				478 90

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1860.			
Ap'l	16.	To balance brought forward	18,452 44
May	22.	To cash paid N. M. Lee & Co., for nett sales of man Soloman	665 00
			$19,117 44
June	4.	To balance per contra	13,245 35
	22.	cash paid their draft favor of B. D. Filler	150 00
July	7.	" N. A. Grigsby & Co., for 2 negroes, Charles and John, sent to them in February last	2,750 00
	18.	" for girl Mary	1,150 00
	23.	" H. N. Templeman & Co., for woman Frances, for Mrs. Jane S. Boxley	1,000 00
	24.	" their draft from B. D. Filler	2,145 12
	28.	" J. G. Boisseaux for boy Anderson	750 00
Aug.	1.	" their draft favor of Ira E. Wyche	261 50
	3.	" for boy Allen	1,410 00
		" for purchase of boy Isaac	1,255 00
		" " " Thomas	1,435 00
		" " " Wallace	1,200 00
		To amount carried forward	$26,751 97

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1860.			
Aug.	3.	To amount brought forward	$26,751 97
	10.	To cash paid discount on Sorley, Smith & Co.'s acceptance	25 89
		To do. on W. J. Hutchin's draft	148 73
		To Jones, in N. C. funds	1,170 00
	11.	To discount on 3 drafts, entered to their credit this day	75 31
	6.	To do. for purchase of man William	1,960 00
		To do. do. boy Randall	1,450 00
		To do. do. boy Thomas	885 00
		To do. do. girl Frances	925 00
	7.	To do. do. boy George	1,325 00
	8.	To do. do. girl Polly	1,115 00
	9.	To do. do. boy Willis	1,500 00
		To do. do. man Edward	1,500 00
		To do. do. man Miles	950 00
		To do. do. man Henry	1,425 00
		To do. do. Malvina on 6th inst	1,340 00
	15.	To do. do. woman Coley	1,250 00
	16.	To do. do. Dr. A. S. Grigsby for atten'g Mary	11 00
		To do. do. discount 6 drafts, entered to their credit on 14th instant	195 90
	15.	To do. do. Rucker for negro	1,140 00
		To do. do. for purchase of man Sam	1,400 00
		To do. do. girl Lucinda	1,370 00
		To do. do. girl Maria	1,400 00
		To do. do. woman Amelia and child	1,410 00
	16.	To do. do. girl Jane	1,240 00
		To do. do. N. M. Lee & Co., amount of bill for board of negroes	114 00
	22.	To do. do. handed Jones	300 00
		To do. do. do.	50 00
	24.	To do. do. Dr. A. S. Grigsby, med. bill	7 00
		To amount carried forward	$52,434 80

	28. By enclosed by E. B. Nichols & Co., check on New York		995 00	
	Premium		2 49	
				997 49
Apl.	2. By enclosed by Wm. J. Hutchins, 2 checks on New York	985 00		
		497 40		
			1,492 40	
	Premium		3 73	
				1,496 13
	3. By enclosed by them, 2 checks on New York, $1,000 each		2,000 00	
	Premium		5 00	
				2,005 00
	9. By enclosed by E. B. Nichols & Co.'s check on N. Y., for		3,383 09	
	Premium		8 46	
				3,391 55
	10. By enclosed by E. B. Nichols & Co., check on N. Y.		587 67	
	Premium		1 47	
				589 14
	10. By enclosed by Wm. J. Hutchin's, check on New York		3,987 42	
	Premium		9 97	
				3,997 39
	13. By amount to balance			18,452 44
				$103,
157				
	1860.			
May	5. By cash enclosed by Wm. J. Hutchins, two checks on New York	937 66		
		2,084 25		
			3,021 91	
	Premium		7 55	
				3,029 46
	18. By enclosed check on New York		300 00	
	Premium		75	
				300 75
	21. By cash of G. W. Goldthwaith, sight draft, favor F. H. Gholston on Frost & Toovert, New York, for		1,130 55	
	Premium		2 82	
				1,133 37
	29. By enclosed check on New York, Sorley, Smith & Co., for		1,405 00	
	Premium		3 51	
				1,408 51
June	4. By balance			13,245 35
				$19,117 44
June	4. By cash remitted by Sorley, Smith & Co., check on New York		1,488 84	
	Premium on do		3 72	
				1,492 56
	12. By cash remitted by W. J. Hutchins' check on N. Y		2,361 54	
	Premium		5 90	
				2,367 44
	16. By cash of Jones' 5 checks on New York, of $2,000 each, and 1 of $1,915.77		11,915 77	
	Premium		29 79	
				11,945 56
	17. By cash of Jones' check on New York		64 00	
	Premium		16	
				64 16
Aug.	10. By cash for draft on Sorley, Smith & Co. of 5th July, and payable 1st October			2,725 00
	By cash, and for their draft on W. J. Hutchins, of 4th July, and payable on 10th of November next			9,200 00
	By amount carried forward			$27,794 72

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1860.			
Aug.	24.	To amount brought forward	$52,434 80
	20.	To cash paid for purchase of boy Virgil	1,580 00
	23.	To do. do. boy Reuben	1,300 00
		To do. do. boy General	1,285 00
		To do. do. man Henry	1,150 00
Nov.	27.	To cash paid L. W. Matthews, per check	2,500 00
Dec.	3.	To cash paid Sorley, Smith & Co., check on N. Y., returned protested	5,814 01
		To cash paid protest and fees in N. Y. on do	87
		Premium	14 53
	10.	To cash paid L. W. Matthews for 3 negroes purchased by him, as viz: Jacob $805, and Thomas and Andy $2,200, per request of H. N. Jones	3,005 00
		To cash paid Sorley, Smith & Co., acc't of 5th July, 1860, payable on 10th Jan'y, 1861, at the office of B. M. & E. A. Whitlock & Co., N. Y	2,200 00
	15.	To cash paid Sorley, Smith & Co., account payable in New York, returned protested	2,789 00
	19.	To cash paid protest on Sorley, Smith & Co.'s account	86
			$74,074 07
		To balance per contra, due from Matthews & Jones to Hector Davis	$2,180 13

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Dr. *Henry N. Jones in account with Hector Davis.* *Cr.*

1860.			
Nov.	28.	To cash paid premium on gold	150 00
		To do. do.	7 00
	30.	To cash paid purchase of man Willis	1,075 05
Dec.	1.	To do. do. girl Nancy	885 00
	5.	To cash paid for provisions for servants last week	20 00
	6.	To cash paid for purchase of man John	700 00
	14.	To cash paid for 16½ lbs. bacon	2 06
	11.	To cash for purchase of boy John	565 00
	13.	To cash for purchase of man William	700 00
	14.	To cash for purchase of man William	900 00
	15.	To cash for purchase of gold, &c	200 00
		To cash for his draft in favor of ticket-agent for Danville R. R. Co'y	100 00
	26.	To cash paid Edw. P. Scott for girl Fanny	400 00
1861.			
Jan.	22.	To cash loaned Jas. Mitchell, per son Leroy's receipt	100 00
		To cash paid for two negro blankets in Dec'r last	2 50
			$5,807 56
1862.			
Mar.	18.	To balance per contra, due from Henry N. Jones to Hector Davis	$1,742 64

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Aug.	10.	By amount brought forward		$27,794 72
		By cash for Sorely, Smith & Co., acceptance due 10th Nov		2,625 00
		By cash for W. J. Hutchins, 2 drafts on Reed & Tracy of 4th July, and payable 1st Oct., acceptance waived	2,180 90	
			1,500 00	
				3,680 90
	14.	By cash of Jones, their draft on Sorley, Smith & Co. of 5th July, due 10th Dec		2,789 00
		By cash of W. J. Hutchins, draft of 4th July, and due 10th Dec	1,600 00	
		By cash do., draft of 4th July, due 25th November.	1,800 00	
		By cash do., 3d draft of 4th July, and due 10th Nov.	5,107 90	
				8,507 90
	22.	By cash for W. J. Hutchins, 2 acceptances, due 10th Jan'y, 1861	1,988 75	
			737 00	
				2,725 75
		By cash do. to 2 accept's, 20th Jan'y, 1861		7,000 00
		By cash for Sorley, Smith & Co., 2 acceptances to 10th Jan'y, 1861		2,200 00
Nov.	19.	By cash for Sorley, Smith & Co., check on B. M. and E. A. Whitlock & Co. for		5,814 01
		Sorley, Smith & Co., check on do. for		100 00
		And E. B. Nichols & Co., check on Importers and Traders' Bank, N. Y		750 00
		Premium		16 66
	23.	By cash of Jones, W. J. Hutchins' account, due 1-3 Feb'y, 1861, for	5,000,	
		Less discount for 72 days	60	
				4,940 00
		By cash of W. J. Hutchins, account due 1-3 March, 1861	3,000 00	
		Less 100 days, discount	50	
				2,950 00
		By amount carried forward		$71,893 94

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1860.			
Nov.	23.	By amount brought forward	$71,893 94
Dec.	19.	By do. to balance	2,180 13
			$74,074 00

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1860.			
Nov.	27.	By cash of him in sundry checks and drafts	502 31
Dec'r	5.	By cash for nett proceeds of S. Stone and Bank's acc	1,349 99
	14.	By cash of him in N. C. funds	25 00
1862.			
Mch.	18.	By cash J. Young's note endorsed by Mrs. H. E. Lewellen, p'd by Webb & Ward	2,187 12
		By amount balance	1,742 64
			$5,807 06

EXCEPTIONS OF DEFENDANTS ENDORSED ON EXHIBIT X X X X.

Exceptions to the within report.

Mrs. Crouch and her children and Ann Davis except to this report, for the reasons, causes, and errors assigned in the exceptions of Dec'r, '65, and May, '68, to the report returned in Feb'y, 1868, which I wish to be considered as repeated here, except that relating to the debt claimed by R. D. James, which is now excepted to, 'cause it is not treated as having been fully paid out of the funds in the hands of the ex'or, and which it was his duty to apply to that debt.

JAMES LYONS,
Counsel for Exceptors.

MAY 28TH, 1870.

In copying this paper, this exception is not to be copied on it, but in acc't X X X X, No. 45.

J. L.

164 *Special statements A A and C C.—Filed June 7, 1870.*

COMMISSIONER'S OFFICE,
Richmond, June 7, 1870.

In the Richmond chancery court.

DAVIS' EX'OR, &C., }
v. }
CROUCH, &C. }

At the instance of James Lyons, esq., I report specially the following accounts, marked "A A" and "C C," showing how the accounts A and C, reported by me on the 18th Feb'y, 1868, would stand if the charges against the estate of Hector Davis, deceased, for the investments by the executor in confederate bonds be stricken from these accounts:

	Principal.	Interest.
Account A would show a balance due from the executor to the estate on the 3rd of April, 1865, in currency of the Confederate States, of.....	$47,331 94	312 50
Instead of.....	13,723 12	312 50
And account C would show a balance due from the ex'or to the estate on the 3d of April, 1865, in United States currency, of.....	5,404 28	240 00
Instead of.....	3,992 88	240 00

Respectfully,

THOMAS J. EVANS, *Commr.*

166 "AA."

Dr. *The estate of Hector Davis, deceased, in account with R. D. James, ex'or,* *Cr.*

	To disbursements from 12th Mch., 1864, to 3d April, 1865, per ac't A, as reported by Commr. Evans on the 18th of Feb., 1868..			45,930 72	
	Less the following charges entered in the aforesaid account A, on pages 22 and 24, as payments for confederate bonds:				
1864.					
April	13. To No. 6137, seven per cent., for $8,000		8,000 00		
	Premium on same		776 88		
	19. To No. 6158, seven per cent., for $1,400		1,400 00		
	Premium on same		29 67		
	29. To No. 1372, 6 per cent., for $3,600		3,600 00		
	Premium on same		59 06		
July	27. To No. 1459, 6 per cent., for $11,800		8,260 00		
	To No. 68, eight per c., for $2,000		1,700 00		
	do. do. $1,500		1,050 00		
Nov.	12. " 6239, 7 p. c., f'r.....	$4,500			
	" 6240, "	$1,300			
	" 6241, "	$1,000			
	" 6242, "	$2,000			
	" 6243, "	$1,700			
	" 6244, "	$ 100			
	" 6245, "	$2,000			
			8,633 21	33,508 82	
				12,421 90	
1865.					
April	3. By amount to balance.....			47,331 94	312 50
				$59,753 84	312 50

167 "AA."

1864.			
Mar.	12. By balance per account A, page 23, as reported by Commr. Evans on the 18th of Feb'y, 1868	40,148 47	
	By receipts from 12th March, 1864, to 3d April, 1865, per account A, as reported by Commr. Evans on the 18th of Feb., 1868	19,605 37	
1865.			
April	3. By interest per said account A		312 50
		$59,753 84	312 50
		Principal.	Interest.
	By balance per contra due from the executor to the estate of Hector Davis, dec'd, in the currency of the Confederate States	47,331 94	312 50

168 "CC."

On the 18th February, 1868, Commissioner Evans reported specially, at the instance of James Lyons, esq., account CC, on pages 46 and 47, commuting the confederate money which R. D. James, executor of Hector Davis, deceased, received and paid out each month, into gold or United States currency:

		Principal.	Interest.
By the said account C there was reported a balance due from the said executor to the estate of Hector Davis, dec'd, on the 3d of April, 1865, in United States currency, the sum of		$3,992 88	240 00
If the payments for confederate bonds, amounting in the aggregate to $33,508.82, be deducted from the charges on the debit side of that account, thus—			
1864.			
Apl. Paid $13,865.61 at 22½ for one	616 25		
July. " 11,010.00 at 21½ "	512 09		
Nov. " 8,633.21 at 30½ "	283 06		
It will increase the aforesaid balance of $3,992,88 by the sum of	1,411 40 =	1,411 40	
		$5,404 28	240 00

Exhibits filed with commissioner's report.

RICHMOND, *January* 27, 1863.

Received of Lee & James one thousand dollars, which is money taken by me to proceed with to the State of Arkansas, and for me there to superintend and apply such money at such times and such ways as shall be practicable in protecting and preserving certain property belonging to the estates of Henry N. Templeman and Hector Davis jointly, and property belonging to the estate of Hector Davis individually; and I make such accounts of my proceedings therein and *and* return all such moneys not accounted for in expending as aforesaid. The same having been charged to Templeman & Co. on H. Davis' books.

W. H. BOWCOCK.

169 *Mr. Hector Davis in account with P. S. Dawson.*

1862.				
Dec.	22.	To cash	2,400 00	
	23.	To do	1,000 00	
	26.	To do	8,085 15	
				11,485 15
	22.	To nett sales of 9 negroes	8,500 00	
	23.	To sale of man Jefferson	1,222 00	
				9,722 00
				$21,207 15
		Credits.		
1862.				
Nov.	21.	By cash paid for woman Phœbe	780 00	
Dec.	6.	Do. loaned	2,000 00	
	23.	Do. paid Geo. W. Dawson's draft	1,336 50	
		Do. loaned	8,000 00	
	26.	Do. paid J. R. Sedgwick	109 25	
		Do. paid T. Jones	155 00	
		Do. sent Mrs. Dawson	100 00	
	31.	Do. paid D. McDaniel for man Jefferson	1,250 00	
				13,730 75
		Balance		$7,476 40
1863.				
April	1.	By Lee & James for this amount		$7,476 40

$7,476.40. Richmond, April 1, 1863. Rec'd of Hector Davis seven thousand four hundred and seventy-six $\frac{40}{100}$ dollars, being in full for balance of nett sales of all negroes sold by him on my acc't to this day.
P. S. DAWSON.

On the 17 Dec'r, 1867, I compared this account with the books of Hector Davis, dec'd, and found that it was correctly copied from the books.

T. J. EVANS, *Comr.*

170 *Mr. Hector Davis in ac't with Jos. Stern.*

1861.			
Mar.	11.	To balance due this day	3,500 00
	25.	To cash	200 00
Apl.	5.	To do	145 00
Nov.	29.	To nett sales of woman Bettie	757 50
1862.			
Jan.	18.	To " " girl Martha Ann	137 00
Dec.	2.	To cash	2,000 00
1863.			
Apl.	3.	To interest on ac't, as per agreement, to this day	358 16
			$7,097 66

Credits.

1861.				
Mar.	30.	By charges paid on girl Martha	1 25	
Apl.	8.	By cash paid draft in favor of T. J. Bagby	625 00	
May	4.	By board of woman Bettie	3 60	
Dec.	6.	By cash paid nett sales of woman Bettie	557 50	
1862.				
Apl.	11.	By cash paid on ac't	1,500 00	
Nov.	29.	By cash paid	2,000 00	
				4,887 35
		Balance		$2,210 31

1863.			
Apl.	3.	By this amount paid Lee & James	$2,210 31

$2,210.81. Richmond, April 3, 1863. Rec'd of Hector Davis twenty-two hundred and ten $\frac{31}{100}$ dollars, being in full for the balance due me on his due-bill of 26 Dec'r, 1860, for thirty-five hundred dollars, and all other transactions of all descriptions to this time.
JOSEPH STERN.

On the 17th Decem'r, 1867, I compared this account with the books of H. Davis, dec'd, and found that it was correctly copied from those books.

T. J. EVANS, *Comr.*

171 XX.

DR. *Richard D. James, ex'or H. Davis, dec'd,*
In account with Hector Davis & Co., CR.

1863.				
Jan.	3.	To cash paid Richmond Enquirer		10 00
		" " John Lightfoot		2,442
		" " City tax bill		284 06
		" " H. Meinhard		1,198 91

	"	"	Miss Mary Goodwin	1,479 80
	"	"	Hugh Scott	1,195 60
	"	"	Owens & Son	27 30
	"	"	Jno. M. Ferguson	1,586 10
	"	"	Tabb & Son	16 20
5.	"	"	Jno. B. Davis, (due-bill)	10,000
	"	"	A. W. Nolting	7,956 90
	"	"	B. L. Winston	2,877 95
9.	"	"	Maddux	60
12.	"	"	Virg'a Ann Isham	100
	"	"	C. P. Lipscomb, 52, 91 50	143 50
17.	To cash paid		Denoon & Mills	1,568
19.	"	"	Henry Stern	1,288 70
23.	"	"	E. Lapeice	1,000
	"	"	J. W. Brightwell	2,526 15
				$35,761 17

1863.					
Jan'y	1.	By cash from safe	$1,483 35		
	"	of Eliza Ann Turner	1,650		
	"	of Lieut. Mills	2 50		
	"	of R. Harris	1,700		
	"	of T. C. Thackston	3,600		
	"	of Jones & Slater	2,550		
	.3.	" of J. W. Wells	50 00		
	5.	" from safe	383 50		
	6.	" of A. B. Davis	4,700		
	8.	" of R. F. Morriss	216		
	13.	" of W. J. Shumate	4,000		
Dec.	23.	" of Ro. H. Davis	7,584 54		
					27,919 89

1864.			
Jan.	1.	Balance to your debit	7,841 28
	1.	By cash of Messrs. Lee & James	7,841 28

172 RICHMOND, *March 23d*, 1864.

$2,375.31. Rec'd of R. D. James, surviving partner, twenty-three hundred and seventy-five *dollars* $\frac{31}{100}$ dollars, being in full for the sum of $1,485.31, due to me for services as clerk, and of $890, due to J. D. Burke for money borrowed of him. The first amount is receipted for in book.

B. W. ELMORE.

Mr. Hector Davis in ac't with B. W. Elmore.

1862.				
Dec.	31.	For services in writing up books in the year 1861 and 1862, previous to 20th Octo. last	550 00	
		For services as clerk from 20th Octo. last to this day, inclusive, 2 mos. and 12 days, @ 2,500 per year	407 31	
1864.				1,047 31
Mar.	23.	For this amount, due by J. D. Burke		890 00
		For services rendered as clerk to 21st Dec'r, 1863		1,000 00
				$2,937 31

1861.		CREDITS.		
June	29.	By cash	50 00	
1862.				
Feb.	26.	do	30 00	
July	5.	do	20 00	
Nov.	12.	do	20 00	
	26.	do	50 00	
Dec.	12.	do	72 00	
	16.	do	80 00	
	31.	do	240 00	
				$562 00
				$2,375 31
		By this amount received of Lee & Bowman		$2,375 31

Mr. Hector Davis in account with J. D. Burke.

1860.
Sept. 8. To cash received of B. W. Elmore $890 00

CREDIT.

1864.
Mar. 23. By cash paid B. W. Elmore 890 00

Endorsed (in commissioner's handwriting):
Decem. 17, 1867. Compared by me with the books of H. Davis, and found to be correctly copied therefrom.

173 *Mr. Hector Davis in account with W. H. Givin.*

1862.

Sept.	17.	For sale of boy Reuben	1,401 40		
	19.	" 5 negroes	2,616 60		
	20.	" man Solomon	1,282 80		
	22.	" woman Christiana & child	1,568 00		
	23.	" 4 negroes	2,190 00		
	26.	" 2 do	2,548 00		
					11,606 80
Octo.	3.	" 2 do	2,753 50		
	10.	" woman Caroline	1,508 20		
					4,261 70
	6.	By cash	500 00		
	7.	"	1,700 00		
		"	2,400 00		
	8.	" of R. H. Davis	500 00		
	15.	" of Pairo, for man Napoleon	707 00		
		" of Pairo, for man William	650 00		
	16.	" of E. F. Keen, for boy Alexander	1,300		
	17.	" of Emily C. Stacy, for girl Lucy	1,450 00		
		" of Mrs. Williams, for Rachael and 2 children	1,550 00		
	20.	" of A. M. Bowe, for Ann and 2 children	1,700 00		
	23.	" of Noland, for boy Nathan	925 00		
	25.	" of W. H. Jones, for boy Robert	1,050 00		
		" of Strider, for man John	600 00		
		" of Shields, for boy Dallas	1,075 00		
	29.	" of Dunlop & Stedman, for girl Caroline	1,150 00		
		" of Dunlop & Stedman, for Martha Ann	950 00		
		" of Dunlop & Stedman, for boy Dennis	850 00		
	30.	" of J. D. James, for girl Mary	800 00		
		" of Murphy, for boy Lewis	1,000 00		
					20,850 00
174					
	31.	" of West, for sale of woman Kitty and 2 ch'n			1,250 00
Nov'r	5.	" bills receivable for H. R. Cronee's note at 30 days, for sale of boy Andrew			900 00
	1.	By cash of D. McDaniel, on land	1,500 00		
		By " of D. McDaniel, sale of Rachael and 2 children	1,700 00		
					3,200 00
		Forward			$42,068 50

1862.

		To amount forwarded		$42,068 50
Nov.	10.	To cash received of Rogers, for woman Martha	1,400 00	
	11.	To cash received of Gilchrist, for woman Margaret	1,300 00	
	13.	To cash received of Ferguson, for boy Owen	525 00	
	14.	To cash received of Rogers, for boy Daniel	1,100 00	
				4,325 00
	17.	To cash received of Bruin, for boy Sidney		1,420 00
	27.	To cash received of Geo. Ferguson, for boy Mingo		850 00
		To cash received of Fitzgerald, for Eliza and 2 children		1,550 00
Dec.	10.	To cash received of W. S. Rogers, for girl Rosa		1,300 00
	12.	To cash received of Jno. Baxter, for boy Isaac		1,237 50
		To cash received of Watkins, for man Levy	1,325 00	
		To cash received of R. H. Davis	2,611 75	
				3,936 75

	20.	To cash received of D. McDaniel, for boy Lewis	1,670 00	
		To cash received of D. McDaniel, for boy Jeff	1,600 00	
		To cash received of D. McDaniel, for boy Joe	1,390 00	
		To cash received of W. S. Rogers, for girl Julia	1,275 00	
				5,935 00
		To cash received of Moran for girl Isabella		1,310 00
175		To cash received of Bruin for girl Martha		1,075 00
	22.	To cash received of Jones & Slater for boy Ben		1,725 00
	27.	To cash received for sales of 3 negroes	4,768 10	
		To cash received for sales of 2 do.,	1,369 00	
				6,137 10
	29.	To cash received for sale of boy Peter		1,343 00
1864.				
Aug.	15.	To profit and loss for negro girl Milly Jane, or Mary Jane, purchased 31st Octo., 1862, and sold about 1st Nov. following, but not accounted for on my books		1,090 00
		Forwarded		$75,302 85
1864.				
		To amount forwarded,		75,302 85

CREDITS.

1862.				
Sep.	17.	By purchase of girl Ellen	480 00	
	20.	" of woman Christianna and child	1,560 00	
	25.	" of boy Walter	1,200 00	
	30.	" of man Napoleon	570 00	
	17.	By cash	2,500 00	
	20.	" paid S. Grady	1,200 00	
	23.	" " Dickinson & Hill for man Edward	1,305 00	
	24.	" loaned	5,575 00	
		By purchase of woman Mary Ann	1,090 00	
		" of girl Lucy	1,375 00	
		" of girl Isabella	1,305 00	
		" of woman Ann and 2 children	1,655 00	
		" of man William	605 00	
		" of woman Rachael and 2 children	1,450 00	
		" of boy Nathan	900 00	
		" of boy Dallas	1,000 00	
		" of boy Robert	900 00	
		" of girl Milly Jane	1,090 00	
		" of boy Lewis	900 00	
176	Octo.	8. By cash	2,200 00	
		9. " paid S. Grady for girl Caroline	1,500 00	
		16. " paid E. F. Kean for man	500 00	
		29. " paid Dickinson & Hill for woman and children	3,505 00	
	Nov.	1. " paid for woman Eliza and 2 children	1,400 00	
		4. " paid E. H. Stokes for girls Margaret and Maria	1,950 00	
		6. " paid Hill & Dickinson for boy Isaac	1,190 00	
		7. " paid Alfred King for girl Martha	1,380 00	
		" paid Dickinson & Hill for boy Owen	500 00	
		19. " paid Owenhum for shoes, &c., for Margaret	14 75	
		" paid for boy Daniel	1,050 00	
		17. " paid for shirts for Mingo	3 00	
		" sent by express to Goldsboro, N. C	3,800 00	
				45,652 75
		Forwarded		29,620 10
1862.				
		To amount forwarded		29,650 10
Dec.	3.	By cash paid draft to Dickinson & Hill	1,000 00	
		By cash paid draft to E. H. Stokes	1,300 00	
		" " " to S. R. Fondren	1,550 00	
	6.	" " " to Jos. Bruin	1,400 00	
		By " " for clothing for girl Rosa	24 50	
	8.	" " Waterman for girl Lucy	12 50	

	9.	"	" for medicine for Rosa	1 25	
		"	" loaned	4,200 00	
177	17.	"	paid for clothing for girl Isabella	20 00	
	20.	"	loaned	9,000 00	
	22.	"	paid E. Brittingham	2,900 00	
1864.					
Mar.	23.	By profit and loss for one-half of $2,122.00, being profits on negroes sold on joint ac		1,061 00	
					22,469 25
		Balance			$7,180 85
1864.					
Aug.	15.	By Lee & Bowman for balance to his credit on the 1st Jan'y, 1863, passed to credit of latter account on settlement			$7,180 85

$7,180.85. RICHMOND, *Aug. 15th*, 1864.

Received of R. D. James, ex'or of Hector Davis, dec'd, seven thousand one hundred and eighty $\frac{85}{100}$ dollars, being in full of balance due me.

W. H. GIVIN.

DECEMBER 17, 1868.

I compared this account with the books of H. Davis, dec'd, and found it correctly copied therefrom.

T. J. EVANS, *Comr.*

Hector Davis' est. to Wm. S. Day, Dr.

1862.			
Mar.	17.	To this amount to his credit on the books of said Davis	$150 15
		To interest on same from date, 4 years 10 mos	42 50
			$192 65

Sworn to by Wm. S. Day before me this 15th day Jan'y, 1867.

THOS. J. EVANS, *Comr.*

178 *Hector Davis, guardian, in acc't with Jennie, Sallie, and Bettie Davis, wards.*

			Dr.	Cr.
1855.				
Jan.	1.	Balance due this day, as shown by adm'r acc't	3,170 06	
		Interest on same to 1 Jan'y, 1856, 1 year	190 20	
July	16.	To cash of James Poor for rent	21 26	
	17.	To cash of R. M. Sizer, hire of Anthony, 1854	51 50	
Oct.	14.	To cash of Mrs. Sallie Davis for gun	12 00	
Jan.	22.	By cash paid American Life Insurance and Trust Co., vouchers		37 96
			3,445 02	37 96
1856.				
Jan.	1.	Bal. due wards this day	3,407 06	
		Interest on above to 1 Jan., 1857, 1 year	204 42	
July	1.	To cash of J. C. Voss for half year's hire of Sam	75 00	
Aug.	27.	By cash paid Kent, Paine & Co., per voucher		7 03
		By cash paid clerks' tickets, per voucher		5 40
		By cash paid sundries for wards		20 00
July	7.	By cash paid M. A. Payne, per voucher		7 50
Aug.	12.	By cash paid S. N. Davis, per voucher		171 00
Nov.	28.	By cash paid M. A. Payne		15 30
			3,686 48	226 23
1857.				
Jan.	1.	Bal. due wards this day	3,460 25	
		Interest on above to 1 Jan., 1858, 1 year	207 62	
Feb.	3.	To cash of J. C. Voss, half year's hire of Sam	75 00	

May	26.	To cash of R. W. Poor, rent for 1854–'5	32 85	
		To cash paid R. W. Poor, rent for 1855–'6	30 00	
Mar.	4.	To cash of James River and Kanawha Company, hire of Anthony and Daniel	316 00	
179	April	10. By cash paid G. M. West, per voucher		5 12
	May	20. By cash paid Jno. C. Page, per voucher		2 50
July	1.	By cash paid Pattie A. Payne, per voucher		32 50
July	1.	By cash paid M. B. James, per voucher		241 29
Aug.	28.	By cash paid J. W. Davis, per voucher		21 50
Oct.	30.	By cash paid clerk's tickets, per voucher		8 55
Mar.	15.	By cash paid Pattie A. Payne, per voucher		30 75
			4,121 72	342 21
1858.				
Jan.	1.	Bal. due wards this day	3,779 51	

Hector Davis, guardian, in acc't with Jennie, Sallie, & Bettie Davis.

1858.			Dr.	Cr.
Jan.	1.	Bal. due wards this day, (brought forward)	3,779 51	
		Interest on above to 1st Jan'y, 1859, one year	226 77	
April	21.	To cash of J. C. Voss on acc't of his bond, 1857	100 00	
Aug.	19.	To cash James River and Kanawha Com'y, hire of Anthony and Daniel	340 00	
Feb.	23.	By cash paid Maggie Wright, per voucher		6 47
		By cash paid Dudley & Johnston, per voucher		7 69
Jan.	26.	By do. do. do.		21 80
Mar.	23.	By cash paid P. K. White, per voucher		5 00
		By cash paid T. R. Price & Co., per voucher		7 50
		By do. do. do.		19 25
			$4,446 28	269 50
180	1859.			
	Jan.	1. Bal. due wards this day	4,176 78	
		Interest on above to 1st Jan'y, 1860, 1 year	250 61	
Jan.	14.	To cash of M. F. Bowe, Sam's hire, 1858	143 00	
Feb.	14.	By cash paid M. L. Mayo, per voucher		75 00
Jan.	1.	By cash paid Drs. R. and R. Cabell, per voucher		5 00
Mar.	1.	By cash paid ex'on in favor of Sheppard, per voucher		88 41
May	11.	By cash paid T. R. Price & Co., per voucher		8 61
Aug.	19.	By cash paid M. B. James, per voucher		204 19
Sep.	28.	By cash paid clerk's tickets, per voucher		1 44
Oct.	14.	By cash paid Chas. H. Wynne, per voucher		7 75
			$4,570 39	$390 40
Jan.	1.	Bal. due wards this day	4,179 99	
		Interest on above to Jan'y 1st, 1861, 1 year	250 80	
	16.	To cash of Warren for hire of Sam, 1859	150 00	
April	7.	To cash of Jordan & Winn, hire Anthony and Daniel.	80 00	
Aug.	1.	To cash of James River and Kanawha Company, hire Anthony and Daniel	640 00	
Feb.	15.	By cash paid M. L. Mayo, per voucher		265 64
April	25.	By cash paid Alfred Moses, per voucher		15 25
May	11.	By cash paid Jennie Davis to buy sundries		20 00
			$5,300 79	$300 89
1861.				
		Bal. due wards this day	4,999 90	

181 *Hector Davis, guardian, in account with Jennie, Sallie, and Bettie Davis, wards.*

1861.			Dr.	Cr.
Jan'y	1.	Bal. due wards this day (bro't forward)	4,999 90	
		Interest on above to 1st Jan., 1862, 1 year	299 90	
	19.	To cash of Edward Warren, hire of Sam	146 75	
	1.	By cash paid C. A. Gwatkins, per vouchers		12 05
	8.	" T. R. Price & Co., "		13 75
	8.	" Watkins & Ficklin, "		34 16

10.	"	E. S. Pleasants	"		133 50
May 7.	"	Sallie Davis,	"		15 00
June 19.	"	Alfred Moses,	"		13 99
	"	expenses fr'm school,	"		12 50
Nov. 22.	"	Sam'l M. Price,	"		32 41
				5,446 64	269 36

1862.			
Jan'y 1.	Bal. due wards this day	5,177 28	
	Interest on above to 1st Jan., 1863, 1 year	310 64	
27.	To cash of E. J. Warren, hire of Sam, 1861	123 00	
Feb. 12.	By cash paid Jas. H. Bowles, per voucher	8 68	
13.	By cash paid E. S. Pleasants, per voucher	65 00	
Mch. 3.	By cash paid Charles Quarles, per voucher	188 00	
Dec. 15.	By cash paid Jennie Davis, to purchase clothing, &c	80 00	
		5,610 02	341 68
1863.			
Jan'y 1.	Bal. due wards this day	5,629 24	

182 COMMISSIONER'S OFFICE,
Goochland C. H., Oct. 2d, 1863.

To the county court of Goochland County:

Your commissioner reports that, on the day of June, 1863, the accounts of Hector Davis, guardian of Jennie, Sallie, and Bettie Davis, were placed before him for settlement; that the name of the guardian aforesaid was included in a list of fiduciaries whose accounts were before him for settlement, and posted at the front door of the court-house of said county, on the 1st day of Sept'r court, and on the 2d day of October, ten days having elapsed since said acc't was so posted, your commissioner made up and completed the foregoing account.

Your commissioner reports that, on the first day of Jan'y, 1863, he finds a ballance due the aforesaid wards, Jennie, Sallie, and Bettie Davis, from their guardian aforesaid, of $5,269.24.

Your commissioner deems it pertinent to remark that the said Hector Davis had kept an acc't of receipts and disbursements as guardian aforesaid; that said account shows many credits which your comr. is disposed to regard as justly due him from the general character of the papers *summitted* to him, which disclosed not only perfect fairness towards his wards, but even liberality; that for many of the items so claimed, doubtless proof may be obtained, but in the absence of proper vouchers, your commissioner has deemed it proper not to allow them; that some few items your commissioner has allowed, being satisfied from their character and that the entries were just. The guardian being now dead, his oath cannot be had in maintenance of said account, and therefore many items which your commissioner would have allowed on its evidence have been excluded from this account. That the foregoing account has laid in his office for ten days since completion, and no exception been taken thereto.

Given under my hand as commissioner of the county of Goochland *County* the day and year first aforesaid.

F. N. FLEMING,
Commissioner.

Commissioner's charges for time employed in making out the foregoing acc't and report, &c., 22 hours..... $22 00

At a court held for Goochland County, 21st December, 1863.

This report of the settlement of the accounts of Hector Davis, guardian of Jennie, Sallie, and Bettie Davis, orphans of Thomas J.
183 Davis, dec'd, having been filed one month, and no exception being filed thereto, was received and ordered to be recorded.

Teste:

WILLIAM MILLER, *D. C.*

A copy—Teste:

NATH'L MILLER, *Clerk.*

Estate of Hector Davis, dec'd, in acc't with R. D. James, Dr.

1860.				
June	30.	For my ¼th of profits arising from "commission account" this month		351 01
July	31.	For my ¼th of profits arising from "commission account" this month		247 87
Aug.	31.	For my ¼th of profits arising from "commission account" this month		450 35
Sep.	30.	For my ¼th of profits arising from "commission account" this month		370 55
Oct.	31.	For my ¼th of profits arising from "commission account" this month		304 52
Nov.	31.	For my ¼th of profits arising from "commission account" this month		32 69
Dec.	31.	For my ¼th of profits arising from "commission account" this month	229 08	
		Deducted from my loss	350 06	
			120 98	
1861.				
Jan.	31.	For my ¼th profits this month		106 15
Feb.	28.	do. do. do.		410 36
Mar.	31.	do. do. do.		653 76
Apl.	30.	For my ¼th loss this month	277 92	
May	31.	do. do. do.	14 38	
184 June	30.	do. do. do.	134 29	
July	31.	do. do. do.	23 97	
Aug.	31.	For my ¼th profits this month		61 63
Sep.	30.	do. do. do.		26 19
Oct.	31.	For my ¼th loss this month	21 07	
Nov.	30.	For my ¼th profits this month		79 11
Dec.	31.	For my ¼th loss this month	147 86	
1862.				
Jan.	31.	For my 4th profits this month		258 38
Feb.	28.	do. do. do.		177 58
Mar.	31.	do. do. do.		169 38
Apl.	30.	For my loss this month	14 73	
May	31.	For my ¼th profits this month		63 10
June	30.	do. do. do.		10 30
July	31.	do. do. do.		407 70
Aug.	31.	do. do. do.		957 28
Sept.	30.	do. do. do.		1,708 63
Oct.	31.	do. do. do.		1,554 61
Nov.	30.	do. do. do.		1,020 40
Dec.	31.	do. do. do.		927 52
		Forwarded	755 20	10,349 07
1862.				
Dec.	31.	Amounts brought forward	755 20	10,349 07
		Off loses		755 20
		Nett profits		$9,593 87

STATE OF VIRGINIA,
City of Richmond, to wit:

I, Thomas G. Jackson, a notary public for State and corporation aforesaid certify that B. W. Elmore and James E. Goddin personally

appeared before me, in my corporation aforesaid, and made oath that the above account, in favor of R. D. James, and against the estate of Hector Davis, dec'd, is true and just.

Given under my hand this 20th day of October, eighteen hundred and sixty-five.

THOS. G. JACKSON, *N. P.*

[U. S. rev. 2 ct. stamp.] [U. S. rev. 2 ct. stamp.] [U. S. rev. 2 ct. stamp.]

Claim of R. D. James against the estate of Hector Davis, deceased, scaled every month.

1861.					
April 30. Debits and credits			398 90		2,927 26
May	14 38		13 07		
June	134 29		122 08		
July	23 97		21 80		
Aug		61 23			55 66
Sept'r		26 19			23 72
Oct'r	21 07		18 32		
Nov'r		79 11			68 78
Dec'r	147 86		123 22		
185 1862.					
Jan'y		258 38			206 70
Feb'y		177 58			142 06
March		169 38			130 30
April	14 73	63 10	10 52		42 07
May		10 30			6 87
June		407 70			271 80
July		957 28			638 19
Aug		1,708 63			683 45
Sept		1,554 61			621 84
Oct'r		1,020 40			340 17
Nov'r		927 52			309 17
Dec'r			707 91		6,468 04
					707 91
					5,760 13

(Endorsed:) Calculation of commr.

And at another day, to wit, at a chancery court of the city of Richmond, held in the court-house in the said city, on the 22d day of July, 1870, the following decree was entered:

DAVIS' EX'OR
vs.
CROUCH & ALS. } Two cases.

In the chancery court of the city of Richmond.

This day these causes came on to be further heard on the papers formerly read, and also on the report of Commissioner Thomas J. Evans, bearing date on the 4th day of May, 1870, and filed in the causes, together with all the special statements, depositions, exhibits, and other papers referred to, and returned with said report; and also upon all the exceptions made to the said report by the counsel for the respective parties to the said suits, and was argued by counsel: Whereupon the court, having duly considered the same, for reasons assigned in his opinion, which is filed among the papers in the cause, doth adjudge, order, and decree as follows, to wit:

That the following exceptions on the part of Ann Crouch and others,

by their counsel, James Lyons, esq., be, and they are hereby, overruled, to wit:

In the paper marked "17," (note of Mr. Lyons for Commr. Evans, Dec. 14th, 1865, returned with report of Commr. Evans of the 18th February, 1868:) Exception 1, for Bowcock's receipt for $1,000; exception 2, P. S. Dawson's receipt for $7,476.40; exception 3, Joseph Stern's claim for $2,210.31; exception 4, J. W. Wells' note, $2,500; exception 5,
186 Hector Davis & Co., $7,841.28; exception 6, investments in Confederate States bonds and funds; exception 7, B. W. Elmore, $2,375.31; exception 8, W. H. Given, $7,180.85.

In the paper marked "25," (exceptions to commissioner's report by defts., May 23d, 1868; exceptions to commissioner's report of May, 1870:) Exception 9, investments in confederate bonds; exception 11, as to the debt reported to be due to Holladay's ex'ors; exception 15, proposing to charge the executor with all debts reported by him "good" and "doubtful;" exception 16, because of the failure of the executor to sell the bank-stocks and insurance-stocks; exception 17, on account of the sales of the bonds of the city of Richmond; and exception 19, on account of the allowance of commissions to the executor.

That the exception No. 10, in the said paper marked "25" to the allowance made by the commissioner, in his report of February, 1868, of a debt of $5,760.13 in favor of R. D. James against the estate of Hector Davis, has been obviated by the said commissioner's report of May, 1870, in which the said commissioner has reconsidered the question, and has disallowed the said claim; and the question is now presented to the court by the exception made on the part of R. D. James, by his counsel, to the action of the commissioner in reconsidering and disallowing the said claim.

The court is of opinion that the last report of the commissioner in respect to this claim is correct in disallowing and rejecting the claim; and the exception thereto on the part of the said R. D. James is therefore overruled.

That the exception No. 12 in the said paper marked "25" is not sustained upon any of the grounds taken by Mr. Lyons, as counsel for the defts., Ann Crouch and others; and that, so far as those objections are concerned, the court is prepared to overrule them, and to confirm the accounts as reported by Commr. Evans in his report of May, 1870. But the court is of opinion that the said report of the said commissioner, and the said account of Hector Davis, as guardian of Jennie, Sallie, and Bettie Davis, ought to be recommitted (and the court doth therefore recommit the same) to the said commissioner, with instructions as follows, to wit:

1. To permit the executor of Hector Davis, if he can, to establish the credits which have not been heretofore allowed to the said guardian in the accounts heretofore reported, by the production of proper vouchers or other evidence, and to show any further credits to which the estate of the said guardian may be entitled on account of subsequent transactions.

2. To restate the accounts, with such charges for interest against the guardian as are indicated in the said opinion of the court, filed with the papers, and as are authorized and required by law.

And the exceptions to th'see accounts taken as aforesaid by the counsel for Ann Crouch and others is hereby overruled.

That the exception No. 13 in the said paper marked "25," as to
187 the claim of Lydia Ransom for $240, is sustained, and the said claim is disallowed and rejected.

That the exception No. 14 in the said paper marked "25," as to the claim

of W. L. Day for $150 for a balance of account, be sustained, for the purpose of ascertaining the true date of the transaction, and that the same be recommitted to the said commissioner for that purpose, with instructions, if the said debt were contracted before the war, to allow the same in full; and if it were a confederate debt, to scale it according to the acts of assembly.

That the 18th exception in the said paper marked "25," on account of the moneys paid to Ann Davis for reasons assigned in the said opinion, filed with the papers, be reserved for future consideration, when the demands of creditors shall have been finally adjudicated, and a fund provided for their payment; and until the further order of the court herein, the said exception is neither sustained nor overruled, but reserved for future decision.

And the court doth further adjudge, order, and decree, that the report of the said Commr. Evans of the 4th day of May, 1870, and the accounts therewith reported, be approved and confirmed in all respects, except so far as the same is reversed or modfied expressly by the foregoing decree, and except as to such matters as by the fore*foregoing* decree are expressly recommitted to the said commissioner. And the said commr. is directed, in conformity with the said decree, to proceed to execute the orders of the court in the premises.

Opinion of the court on exceptions to comr.'s report.

DAVIS' EX'OR *v.* CROUCH, &C. } 19th July, 1870.
CROUCH *v.* DAVIS' EX'OR, &C. }

These cases come before me on exceptions to the reports of the comr.

Exception 1, of Ann Crouch, &c., paper marked 17—Bowcock's receipt for $1,000.

From the evidence it appears that the money was paid to Bowcock by the ex'or to go to Arkansas, to look after the property of the estate in that State. Negroes alone were in possession of the plantation. It was proper to send some one there, and I think the ex'or was right in doing so.

$1,000 in C. S. money, in 1863, was not an unreasonable sum for the purpose.

The exception is overruled.

Exception 2. P. S. Dawson's receipt for $7,476.40.

This item is clearly and satisfactorily proved by Elmore. There is no necessity for producing the details of the demand, since it appears to have been copied from Hector Davis' own books.

The exception is overruled.

Exception 3. Joseph Stern's claim, $2,210.31.

188 This item is also fully proven by Elmore. The account is copied from H. Davis' own ledger, and was paid by the ex'or. The receipt is dated April 3, 1863, and on its face is a receipt from Hector Davis; but the ex'or qualified 13th March, 1863, and is entitled to the credit.

Exception overruled.

Exception 4. J. W. Wells' note, $2,500.

Elmore proves the note was for $5,000, and Davis was liable for half. The ex'or should have the credit for the $2,500.

Exception overruled.

Exception 5. Hector Davis & Co. $7,841.28.

Proved satisfactorily by Elmore, and voucher 49.

Exception overruled.

Exception 6. Investments in C. S. funds. (See p. 14.)

Exception 7. B. W. Elmore $2,375.31.

Sustained by voucher 67, and testimony of Elmore and J. E. Goddin.
Exception overruled.
Exception 8. W. H. Gwin, $7,180.85.
Sustained by voucher No. 68, and by the testimony of Elmore and Goddin.
Exception overruled.
Exception 9. See p. 14.
Exception 10. See p. 17.
Exception 11. To the claim of W. L. and A. R. Holladay, ex'ors of Waller L. Holladay, dec'd.

As to the validity of this claim against the estate of Davis I think there can be no question. The original bond was produced, and a certified copy is filed with the commr. (See paper No. 19.) It is proved, too, by the deposition of A. R. Holladay. (See paper No. 41.)

In fact I do not understand the exception to apply to a denial of the claim, but rather to the liability of the ex'or:

1. Because it was his duty to have required Holladay to have sued Jones; and,

2. Because it is not shown that Jones was insolvent.

As to the first ground. The ex'or could not have gone beyond his jurisdiction to sue Jones himself if he had paid the debt as ex'or of Davis. (See Andrews v. Avory, 14 Grat., 240.)

And a notice to Holladay to sue Jones would not have availed to exonerate the estate of Davis because Jones lived in Texas; and the statute does not require the creditor to sue the principal, unless he resides in the State. (See code, ch. 146, sec. 4, 5, p. 633.)

Besides, although on the face of the bond Davis appears as surety, yet, in fact, he and Jones were partners. (See N. M. Lee's depo'n, paper 43.) So that even if the notice had been available under the statute, and had been given, I suppose it would have been competent for Holladay, in a court of equity, to have shown that they were partners,
189 and in such case Davis' executor could not have successfully resisted the claim, for Davis was liable in his capacity as partner, as well as surety, and equity, which looks to the substance, as well to the form, would so have regarded him. Inasmuch, therefore, as the estate would not have been benefited by such notice, I do not think the ex'or ought to be chargeable from a failure to give it.

As to the 2nd ground alluded to, I cannot see how the solvency or insolvency of Jones could effect the liability of the ex'or, if I am correct on the 1st point.

As to the 3d ground of exception, the debt was contracted in Nov'r, 1860, was not a confederate contract, and I think the case of Dearing v. Rucker has no application to it. In that case, there was a novation of the debt in June, 1862, and the court thought it was a confederate transaction. In this case, the bond was made in Nov., 1860, and before the war, and was not a confederate transaction.

As to the 4th ground of exception, viz, that the ex'or should have bought "silver enough to pay it." I think it was just as impracticable a thing to have done so, as to have sold property for specie, which all the witnesses say could not have been done. If during the war fiduciaries had been required to sell C. S. notes and buy coin to pay the liabilities of the estates they represented, no creditor would have been willing to receive anything else, and no such debts would have been paid at all, because the coin could not have been obtained to meet such a demand. It was an impossible thing, and the law holds no man liable for an impossibility.

The exception is overruled.

12 exception. Claim of Jennie, Sallie and Betty Davis, $5,496.74.

By the report of Feb'y, 1868, this claim was reported at $4,469.24, but by that of May 14, 1870, as $5,496.74.

I do not understand from the exception to the latter report very clearly that this exception is repeated, but I presume it is, and I proceed to pass upon it:

The 1st ground is, that the bequest of $1,500 is as satisfaction of the debt.

The testator was indebted to the three persons above mentioned as their guardian, and therefore the legacy and the debt were not in the same right. And it is held, that where that is the case, there will be no extinguishment of the one by the other. (2 Lomax on Ex'ors, 10, pp. 178, sect. 4, 2d edition; L. C. on Eq., 586; 2 Spence Eq., marg. p. 433, and authorities cited by these authors.)

The 2nd ground of objection is, that the report of Fleming, the commr. who settled the guardian ac. of Hector Davis, was made after his death. The comr. reports that Hector Davis kept an ac., which was exhibited before him. The counsel for the wards says, by the ex'or, and I think it was so, or otherwise the papers could not have been in the hands of the comr. If so, Davis' estate was not unrepresented. But the comr. says there were many credits not allowed because of the absence
190 of proper vouchers, though the papers on their face disclosed not only great fairness on the part of the guardian, but liberality.

12 exception continued. I think an opportunity should be afforded the estate of Davis to furnish these vouchers or sustain them with evidence if it can be done, and it be desired.

Besides this, the guardian's account should be reformed in another particular. I observe that Comr. Fleming charges no interest on the balances in the hand of the guardian. The wards are entitled to interest. And the guardian's ac., when finally settled, should be settled in the usual way of making rests at regular intervals, and charging interest on the balances.

It is proper to remark that the counsel for the wards make no exception on that account.

On this point, the case should be recommitted to the comr. of this court.

The third ground is, that as this debt was of the highest dignity, it ought to have been paid before any other debt; and the ex'or should, therefore, be personally liable for it. But the exceptor does not show that any other guardian qualified after Davis died, and that there was a hand to receive it. In such case, it was the duty of the ex'or to have applied to the court as he did to invest. (See Lyons' adm'r v. Magagnos' adm., 7 Grat., 379.)

And besides, if there had been, the guardian would have incurred a hazardous responsibility to have received depreciated C. S. treasury notes in 1863-64 in payment of a gold debt. I see no grounds for holding the ex'or personally liable for the cause stated.

Exception 13. Lydia Ransom, $240.

This exception is sustained. There is no proof that Hector Davis had a daughter. He was unmarried; and there is no proof of a special contract to board and clothe the girl Jennie in the account mentioned, or to pay for her tuition.

Exception 14. W. L. Day, $150.

From the date, this appears to have been a confederate transaction, and, if so, should be scaled.

But it appears to have only the date of the balance. It may be that it accrued before the war. The true date should be ascertained. If found to be an ante-bellum debt, it should be allowed in full; if a confed. debt, it should be scaled.

Recommitted for these causes.

Exception 15, see page 14 }
Exception 16, see page 14 } of this opinion.
Exception 17, see page 14 }

Before proceeding to pass upon the exceptions which yet remain to be disposed of, I deem it proper to settle some general principles applicable in one aspect or another to them.

191 The extraordinary state of affairs to which the late war gave rise placed fiduciaries having estates to settle, and debts to collect, and investments to make, in a most embarrassing and responsible position. In order to relieve them, the confederate legislature of this State, by an act passed March 5th, 1863, (see Sess. Acts, 1862-'63, p. 81,) authorized fiduciaries to apply to a judge of a circuit court in vacation, and to a circuit court in a suit in term, for leave to invest in C. S. bonds or in bonds of the State of Virginia, and authorized such leave to be given, and provided that the character of existing investments should not be changed unless authorized by the decree of a circuit court of competent jurisdiction.

After the war another act was passed, Feb. 28, 1866, entitled "An act to give effect to certain acts, contracts, and proceedings during the late war." (See Sess. Acts 1865-'6, p. 187.)

Under these acts a very important question arises as to the validity of investments made by fiduciaries under them; that is, whether the fiduciary is released from responsibility for the moneys thus invested. I cannot learn that any of our courts has adjudicated the question, and I am under the necessity of passing upon it as one of first impression in this State, though I find that the same question has been decided in Alabama. (See Watson and wife v. Stone, 40 Ala. Rep., 451.)

The case there was this: Stone was the guardian of Mrs. Watson, then a minor, and on 24th June, 1865, invested $4,000 of his ward's funds in 8 pr. ct. C. S. bonds, and he had on hand at the close of the war $1,800 in C. S. notes received during the war in payment of debts due him in his trust capacity; and the court found that there did not appear to have been bad faith in its receipt or negligence in its retention.

The legislature of Alabama, in Nov., 1861, passed an act very similar to ours, authorizing such investments by fiduciaries; and an ordinance of convention passed in Sept., 1865, sanctioned and ratified such acts very much as did our act of Feb'y 28, 1866.

And the court decided that such fiduciaries are entitled to credits for investments made and for money received before the restoration of the authority of the U. S. under such a law. (See also Ivey and wife v. Coleman, 42 Ala., 410; also Trotter v. Trotter, 40 Miss. R., 710.)

I think this is a sound and just exposition of the law, and that it may be safely assumed that when the honesty and good faith of such transactions by fiduciaries, and their diligence, are not successfully impeached, they ought to be freed from responsibility.

I think an act of March 5th, 1863, was valid—

1st. Because it was passed by a de facto government; and as to that point see the able and elaborate opinion of the court and the authorities cited in Watson, &c., v. Stone, showing that by the general principles

of international law such legislation by a de facto government is valid and binding; and

192 2nd. Because this legislation and the acts done under it were afterwards and after the war ratified and made effective by the act of Feb'y, 1866.

If I am correct in this view of the law, I can see no more reason for holding the fiduciary liable for losses occasioned by the calamitous results of the late war, such as the utter worthlessness of stocks and bonds, and C. S. currency on hand, than he is for the loss of any other property that perishes on his hands without his default or neglect; and this view seems to be in accordance with the settled principles of our court of appeals in regard to the duties, and especially the liabilities, of fiduciaries. (See remarks of Lee, J., in Elliott v. Carter, &c., 9 Grat., pp. 557, 8, 9, and 560.)

In the case under consideration I am unable to see the gross negligence and misconception of duty by the executor of which the counsel for the complainants so earnestly complains.

On the contrary, I think his executorial accounts show activity and diligence. He made large collections and large disbursements in confederate money. The claims of creditors actually outstanding are very few in number, though the amount of some of them is large. Holladay's claim and that of the three Miss Davises constitute the principal parts of the indebtedness to creditors. Both were ante-bellum claims, which it would have been unreasonable to have asked to be paid in depreciated C. S. money in 1863–4, and were claims of which there is strong indications in the record that they were claims for which the C. S. money would not have been received.

The outstanding indebtedness to the estate is larger; but the greater part of these claims in amount were owing by non-residents of Virginia, and as the power of the executor did not extend beyond the jurisdiction of his own State, his responsibilities as to such claims were confined within the same limits. (See Story Confl. Laws, sect. 514, note 4, edition 1365; 2 Kent, marg., pp. 432, 433, note c to p. 432, ed. of 1866; Andrews v. Avory, 14 Grat., 240; 1 Lomax Ex'ors, to pp. 555, last edition.)

And as to the claims in Virginia uncollected, no proof has been brought before me showing that any of these claims have been lost by the negligence or improper conduct of the executor; on the contrary, it is the opinion of a witness professedly well acquainted with Davis' affairs that, in view of the difficulties in the way of making collections and the expense necessarily incident to suits, that it would not have been judicious to have brought suits generally on the claims appearing on his books as outstanding. (See N. M. Lees' depo., pp. 5, 6, q. 11, 12, 13.)

It is well known how such balances as are reported accumulate in the course of a large business carried on for a number of years. Every business man knows how much of his profits in a large business in the course of years run into these uncollectable balances.

As to the question of investments in C. S. bonds, I remark that it appears the executor was conscious of the difficulties of his posi-

193 tion, and in the year following hisqualification filed a bill in chancery, in which he applied to the court for a settlement of his accounts. The original bill has been burnt, but the second filed in its place shows the embarrassments that surrounded him, and that he appealed to the court for instructions as to his duty. All the investments appear to have been made under authority of an act of assembly and

under the sanction of the court. His failure to invest in State bonds, the legacy of Ann Davis, I think, is satisfactorily accounted for. The heavy premium he had to pay for such stock, with the uncertainty of its ultimate value, and then the notice he had from the receiver of the C. S. government, received a short time after his qualification, to the effect that the government would claim the legacy as forfeited and confiscated property combined, justified him in first pausing and then applying to the court in a pending suit in which all the parties were before the court, and not by an ex-parte application, for leave to invest in C. S. bonds. It was the only course left open to him.

And the fact that he had on hand C. S. money for which he had to apply to the court for investment justified him under the circumstances for not selling bank-stocks, &c. He could only have sold them for C. S. money. What could he have done with it? He was already investing funds in that character in C. S. bonds. With the lights then before him, I think it was judicious not to change the investment. It is true these stocks shared the fate eventually of the C. S. bonds, but he could not foresee that, and ought not to be censured or made liable for not before seeing it. There was no more reason for selling them than there was for selling city of Richmond bonds. And the result has proved that it was better to let all these investments stand unchanged, for the city bonds were thus saved to the estate, and since the war have been sold for 71½c. on the dollar.

As the general result of my investigations in this case, I am of opinion that the losses of the estate are to be traced to the result of the late war, and are not attributable to the negligence, bad faith, or bad management of the executor.

If I am correct in these views, they necessarily lead me to overrule the 6th and 9th exceptions to the comr.'s report of 18 Feb'y, 1868, in regard to investments in C. S. bonds.

Also the 15 exception to the same report, in which exception it is claimed that the ex'or should be charged with every debt reported by him good, and every debt reported doubtful, unless he has obtained judgment.

Also the 16th exception for failure of ex'or to sell bank and insurance stocks to pay debts, and also to the 17th exception, which is for the sale of city of Richmond stocks as unwise and unnecessary. It appears from the report of Feb. 18, 1868, account B, p. 37, that this stock was sold in April, 1866, for good money, and the proceeds applied in a due course of administration. I am unable to see from the evidence that the sale in 1866 was either unwise or unnecessary.

194 The 18th exception is for all moneys paid to Ann Davis.

It appears from account G, page 68, of the report of 1868, that the executor has paid to Ann Davis for the support of her children, $1,474.50.

It does not appear from the testimony that there was any specific investment in C. S. bonds for Ann Davis and her children, but the reverse. The executor says they were temporary investments. If this be so, her legacy is still unpaid.

But the debts of the estate must be first paid; and if it should turn out that the estate is insufficient to pay the debt, then, as between the executor and creditors, such payments would be in his own wrong unless he has taken refunding bonds as provided by the statute, and he would have to account to creditors for the amount so paid.

If there should be a surplus after paying all the debts, and that sur-

plus should be insufficient to pay the general pecuniary legacies, then a question of abatement of the legacies would arise.

I think it is premature to decide that question until the creditors shall have had their demands finally adjudicated and a fund provided for their payment. If there should be a surplus after the payment of the debts, it will be time then to decide how that surplus shall be disposed of between the legatees. For these reasons, for the present, I leave the questions under the 17th exception open for future adjudication.

The 19th exception is to the allowance of commissions to the executor.

The statute provides that if the executor fails to lay his accounts before a commissioner within six months after the expiration of any year, he shall receive no compensation for his services. (See code 1860, ch. 132, sect. 8, p. 602.)

In this case, it appears the ex'or did lay his accounts before Commissioner Watson. They were not settled because of the ill-health and subsequent death of Mr. Watson, the comr.

The ex'or, however, did his duty in that regard, and the 19th exception is overruled.

Having disposed of the exceptions filed by the counsel for Mrs. Crouch and children, and of Ann Davis and children, the next exception is that of Davis' ex'or to the report of May 4, 1870.

By the report of February, 1868, the comr. allowed the claim of R. D. James against the estate of Hector Davis, amounting, as scaled, to $5,760.13, for his ¼ share of net profits on sales in the partnership between Davis and James.

The cause was recommitted after that report was made, and in the report of May 4, 1870, the comr. reconsidered the question, and after hearing and considering the arguments of counsel on both sides, and the former as well as additional evidence, disallowed the claim of $5,760.13. And the counsel of James excepts to the last report of the commissioner, and insists that the first should be confirmed.

195 I think the last report is right. According to the evidence, Davis and James were partners, not only as to third persons, but inter se. The agreement was to sell slaves on commission, and, after deducting expenses, the profits were to be divided in the proportion of ¾ to Davis and ¼ to James.

Here is every element necessary to constitute a partnership—a joint interest in profits and losses. (See Colyer on Part., sects. 18 and 19, and authorities cited; Peacock v. Peacock, 16 ves., 49. See also 1 Smith's Leading Cases, 1191, top page, edition 1866.) There is a distinction between a mere employer who stipulates for a compensation in proportion to the profits, even out of the profits themselves, and a partner. But, to bring James into such a position, he must prove the stipulation—he must prove the agreement not to be a partner, and that the reference to the profits was merely a mode of ascertaining the amount of compensation. This is not done, but the contrary is shown. The proof, I think, shows every essential element necessary to constitute him a partner.

If he was a partner, he was both surviving partner and executor. All the partnership assets consisted of C. S. funds. It was his duty to have settled between the partnership and the estate. The profits made consisted of C. S. money, and there was an abundance of that character of money in his hands as ex'or in 1863 and 1864; and I think it would be inequitable to allow him to hold a confed. claim in his hands as surviving partner against an estate of which he was executor, with abundance of C. S. funds in hands, as ex'or, and after the war to claim good money.

Suppose a third party had been executor, and he had tendered the

amount due James in C. S. money, a court of equity would have granted relief under sec. 4, chap. 71, acts 1865–'6, p. 186, commonly known as the scaling act. As James was acting in both capacities, a court of equity should deal with him as if an executor, who was a third party, had, in a claim arising between January 1, 1862, and April 10, 1865, made a bona fide and actual tender to him of the amount due in C. S. notes.

I overrule this exception.

As a general result of the views I entertain of this case—

All of the exceptions are overruled except the 12th, as to which the case is recommitted to enable Davis' ex'or to surcharge and falsify account with 3 Misses Davis, returned by Comr. Fleming, and to charge interest; and the 13th, which is sustained; and the 14th, to be scaled, if found to be a confed. transaction; and the 18th, which is left open and undecided until after the adjustment of debts due and owing by the estate.

All questions between the legatees are undecided and yet open. In the condition of the estate, as shown by the record, these questions, and that in regard to the pay't to Ann Davis and children, cannot be satisfactorily decided until after the debts are either paid or provided for.

196 Was there ever an order convening creditors? If not, the decree recommitting this case for the purposes above indicated should make provision for calling in the creditors of the estate.

DAVIS' EX'OR
v.
CROUCH, &C.

CROUCH, &C.,
v.
DAVIS' EX'OR.

Since the opinion of the court was delivered in these causes Mr. Johnson, the counsel for R. D. James, has called the attention of the court to the fact that a part of the debt from Davis' estate to James was contracted before the war.

The opinion of the court was based on the idea that this was wholly a confederate transaction; that is, contracted wholly within the period from the 30th April, 1861, and December, 1862.

I am satisfied now that this impression was an erroneous one, and that the account commenced in fact in June, 1860; and I desire now to correct the opinion in that respect.

But, while making this explanation, I must still regard this balance as a confederate debt due from James to Davis; there was a continuous running account between the partners from 1860 to 1862. No settlement or ascertainment of balances seems to have taken place between the partners during that interval. There never was a settlement between Davis and James at all, and the balance never was definitely ascertained until after Dec., 1862, and then only to that period; but the business went on, changing the liability of the partners to each other as it progressed from day to day, as one or the other received money; and the partners permitted the business to go on without change or settlement from the period when gold was the currency to that when confederate notes became the currency, and afterwards.

Now, as the partners never seemed to contemplate any change of lia-

bility in consequence of this revolution in the currency of the country, I think it would be wrong in the court to make such a change, and pick out here and there an item which accrued while gold was currency, and charge the estate for it as a gold debt. I think it would be improper to construe this account in one aspect as a gold liability and in another as a C. S. liability; but that the liability of the estate to James should be construed as arising in Dec., 1862, when that liability was ascertained, and not before, when it was shifting and changing by every day's transactions.

If I am correct in this view, the result to which I have arrived in the opinion delivered a few days ago will remain unchanged; for I must still regard this as a confederate liability, arising between January 1, 1862, and April 10, 1865, and therefore subject to the principles indicated in that opinion.

A true transcript of the record. Teste:

BENJ. H. BERRY,
Clerk Chancery Court, Richmond.

197 VIRGINIA:

In the supreme court of appeals, held at the State court-house, in the city of Richmond, on Tuesday, the twenty-second day of April, 1873.

ANN CROUCH, WHO SUES BY HER HUSBAND and next friend William S. Crouch, and her children John G. Crouch, William M. Crouch, Algernon and Columbia Crouch, the last two of whom are infants, who sue by said William S. Crouch, their father and next friend, and Ann Davis, appellants,

against

RICHARD D. JAMES IN HIS OWN RIGHT and as ex'or of Hector Davis, dec'd, Thomas J. Rutherford, and Jenny his wife, Sally and Betty Davis, infants, Ann, a free woman of color, and her four children, Jennie, Audubon, Victoria, and Matilda, infants, appellees.

} Upon an appeal from a decree pronounced by the chancery court of the city of Richmond, on the 22d day of July, 1870.

This day came again the parties by their counsel, and the court, having maturely considered the transcript of the record of the decree aforesaid, and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that the said chancery court erred in overruling the appellants' fifteenth exception to the report of Commissioner Evans; instead of doing which, the said court ought to have recommitted the said report, as to the matter of the exception, to a commissioner of the court, with instructions to make further enquiry, and

198 report as to the debts of the estate of Hector Davis at the time of his death, by persons residing in the State; whether any of said debts, and which of them reported as worthless or doubtful, are now available, or might have been collected or secured by lien upon real estate or otherwise, or by suits instituted since the death of the testator, and as to any other matters connected with said debts which the said commissioner might deem material, or concerning which either of the parties might require him to make enquiry and report; but the court is further of opinion that there is no other error in the said decree than as aforesaid.

Therefore, it is decreed and ordered that so much of the said decree as is above declared to be erroneous, be reversed and annulled, and the residue thereof affirmed; and that the appellee, R. D. James, pay to the appellants their costs by them expended in the prosecution of their appeal aforesaid here. And it is ordered that this cause be remanded to the said chancery court for further proceedings to be had therein, in conformity with the foregoing opinion and decree, which is ordered to be certified to the said chancery court of the city of Richmond.

Opinion of Waller R. Staples.

CROUCH
vs.
DAVIS' EX.

It is insisted by the counsel for appellants that the legacies bequeathed to Jennie, Sallie, and Bettie Davis should have been treated as a satisfaction of the debts due them by the testator, as guardian. In support of this proposition the learned counsel relies upon the rule
199 in equity that where a debtor bequeaths a legacy to his creditor of equal or greater amount than the debt, and of the same character, and payable after the debt becomes due, it is presumed that the legacy was intended to be in satisfaction of the debt. There is no doubt this rule still nominally exists; but the tendency of the more recent decisions is to consider the bequest a bounty & not the discharge of an obligation, and the courts now lay hold of any circumstances, however trifling, for the purpose of repelling the presumption that the legacy was intended as a satisfaction of the debt. (2 Roper on Legacies, 1042; 2 Redf. on Wills, sec. 52, 516.) So far as this record discloses, the only debt of any importance against the testator at the time of the execution of the will, was the one due his wards. After satisfying that debt, the testator was possessed of an ample estate to pay all the pecuniary legacies, and also to make a reasonable provision for Mrs. Crouch and her children. There is no doubt that this was his purpose. Unmarried and intestate, he had no immediate family of his own to provide for. His nephew and nieces were very naturally the objects of his bounty and his affection. It is clear that the legacy bequeathed to R. D. James was not intended as a satisfaction of the debt due him, because that debt was contracted after the will was executed. This legacy is the same in amount with those given to the nieces respectively. Why should the testator make this difference between them? Why discriminate in this way in favor of the nephew and against the nieces? They were his wards, and it is reasonable to suppose his relations with them were more intimate and his regard for them stronger than for either of his other relatives. The very first clause in the will contains the bequest in their favor, thus showing they were prominently in his mind when he
200 determined to make his will. "Item first." (He declares,) "I give to my nieces Janie, Sallie, and Bettie Davis the sum of fifteen thousand dollars to be equally divided between them." This language, taken in connection with the other provisions of the will, and all the facts and circumstances of the case, plainly indicates, I think, that the testator intended a gift of five thousand dollars to each of his nieces, without deduction or abatement. There was no error, though, in the decision of the chancery court upon this point. In the next place, it is insisted that the court erred in holding that the pecuniary legacies constitute a charge upon the real estate. It is universally conceded that, as a general rule, the personal estate is the natural primary fund for the payment of leg-

acies. Whether they are chargeable on the land when the personal property proves deficient, is always a question of intention. When the charge is not created in express terms, it may be established by implication; and in seeking for the expressed intention of the testator, his words are to receive that interpretation which a long series of decisions has attached to them, unless it is very certain they were used in a different sense. (1 Redfield on Wills, p. 433, 435.) Thus it has been held in numerous cases, that where pecuniary legacies alone are first given, and no part of the real estate is specifically devised, and there is a residuary clause devising and bequeathing the residue of the real and personal estate, this operates to charge the entire property with the legacies. This rule of interpretation is founded upon the idea that the testator in blending his real and personal estate into a common fund plainly manifests his purpose to make no distinction between them, and inasmuch as
201 the will contains no previous devise of any part of the real estate, the residue, in such case, can only mean what remains after satisfying the previous gifts. This is the well-established doctrine of both English and American courts. (Greville vs. Browne, 7 House of Lords Cases, 688; Lewis vs. Darling, 16 How. U. S. R., 1, 10; Wilcox vs. Wilcox, 13 Allen R., 252; Shulters vs. Johnson, 38 B. R., 80.)

The only case cited by the learned counsel for appellants as establishing a different rule is Tupton vs. Tupton, (2 John. Ch. R., 614.) That case is, however, easily distinguished from the one now under consideration, and is not in conflict with the authorities mentioned. Chancellor Kent was of opinion that the residuary clause in that case was nothing more than the usual formula in wills, indicating merely that the testator did not intend to die intestate as to any portion of his property, but to dispose of the whole of it. In the present case it is apparent that the residuary clause was designed simply to prevent a partial intestacy from a failure to recollect all the testator's property, but was intended as a substantial and beneficial bequest in favor of the residuary legatees.

In Tupton vs. Tupton the will contained several antecedent specific devises of real estate, to which the residuary clause might be referred, thus giving it its appropriate construction. In this case the testator makes no specific devise of any part of his real estate, & he does not even refer to it in his will, nor does he adopt the ordinary formula to which Chancellor Kent refers. By a single clause he blends his real and personal property into one mass, and declares, "Whatever balance I may be worth I want given to my sister Ann Crouch and her
202 children." What did he mean by these words? Did he refer to the balance of his personal estate simply? If his purpose was to devote his personal property only to the payment of the pecuniary legacies, and to give all his real to Mrs. Crouch and her children, nothing would have been easier than to have so provided in plain and explicit language. The testator having made no specific devise of any part of his real estate, and having blended his entire estate into one residue, it seems to me the inference is irresistible that his intention was to give only the residue remaining after the previous dispositions of his will are satisfied.

It is also insisted that the executor ought to have paid the debts and legacies with the confederate currency in his possession. If it appeared that the creditors of the estate were willing to receive payment in that currency, there might be some reason in holding the executor responsible for his failure so to employ the funds in his hands. But nothing of the kind is proved or asserted. As the confederate notes were then greatly depreciated, and the debts contracted before the war, the fair

presumption is, I think, the creditors were not willing to accept those notes in payment of their debts.

The same may be said with respect to the legatees. The executor cannot be justly chargeable with a devastavit in failing to pay them even if there were no debts against the estate, unless it appeared that the legatees were willing to receive the confederate notes if they had been tendered. The ground is taken, however, that the legacies were payable in the currency in circulation at the death of the testator in 1863. It is true that a will of personal estate generally operates upon the property possessed by the testator at the time of his death,
203 whenever acquired, but in order to ascertain his meaning and intention we look to the date of the will. (2 Lomax on Ex'ors, p. 8.) The cases cited by counsel only show that where legacies are given, generally, it will be presumed that the testator intended they should be paid in the money of the country in which he was domiciled and the will was made, and this rule will be observed, though the testator may change his residence and die in another country. This but illustrates the principle of looking not to the death of the testator, but to the time & place of executing the will, in order to ascertain the objects of his bounty and the kind or value of the currency in which they are to be paid. This is the rule fairly deducible from all the cases. (Holmes vs. Holmes, 1 Russ. & Myl. R., 660; 2 Wm's Exs., 1232 §.) This principle is not affected by the act of March 3d, 1866, for the adjustment of confederate liabilities. That act, by its very terms, only embraces wills executed between the 1st day of January, 1862, and the 17th of April, 1865. It does not confer the slightest authority upon the courts to apply the scale of depreciation to legacies given long anterior to the existence of the confederate currency.

It is next made a ground of complaint that the executor did not use the confederate notes in the purchase of gold, and with that pay the debts and legacies. In the light of subsequent events such a course would have been wise and judicious. Judged by circumstances then existing, it would have been regarded as an act of the greatest folly and rashness in a fiduciary. If, as was the prevailing opinion, the southern
204 cause had been successful, such an act would have been regarded as an unjustifiable sacrifice of the assetts and securities of the estate, and treated as a devastavit on the part of the executor. He was not bound to incur any such risk. The executor was required to act as a judicious man looking alone to his worldly interests would have acted under the circumstances, but he was not required to go beyond that.

Another ground of complaint urged by appellants was the failure of the executor to invest the twenty thousand dollar legacy given to Ann and her children in State stocks or bonds, as directed by the will. It is to be borne in mind that the condition of the country and of all securities, public and private, was altogether different in 1863, when the testator died, from what it was in 1859, when the will was executed. The executor, being greatly embarrassed by this altered condition of affairs and other difficulties attending the administration of the assetts, filed his bill in the circuit court of Richmond, in order that the trusts of the will might be executed under the supervision of a court of chancery. In the progress of the cause the court, upon the petition of the executor, entered an order or orders authorizing him to invest the currency in his hands in confederate or State securities. The investment was thereupon made in confederate bonds. It is true that Ann and her children were alien enemies, and could not be served with process or brought before he court; nevertheless the executor had the right to apply to the court

for its assistance, and the court had the right to make just such an
205 order as was made. No existing investments were thereby altered, no rights were violated. Confederate currency received properly in a due course of administration was simply converted into confederate bonds until it could be applied to the claims of creditors or legatees. The estate, exclusive of this fund and exclusive of the reality, was greatly more than sufficient to pay all the legacies. But for the loss of this property the investment could now be made according to the terms of the will; and the burden would fall upon the residuary legatees, who were parties to the suit, must have been apprized of what was done, but made no objections to any of the orders entered in the cause. But, let it be conceded that these orders were not binding upon the non-resident parties, the act of the executor in bringing the suit and invoking the aid of the court evinces, I think, entire good faith, due diligence, and a laudable desire to protect the rights of creditors and legatees; and I do not see how it is possible, consistently with the rulings of this court, to throw upon him the loss of this fund. (Elliott vs. Carter, 9 Gratt., 541; Meyers vs. Zetelle, 21 Gratt., 733.)

It was argued, however, that as the court authorized an investment in State bonds, and the testator so directed, those securities should have been selected by the executor. The executor states that he made no investment in the name of Ann and her children because they were alien enemies, and he was notified that the confederate authorities would take steps to sequestrate their legacies. He did not deem it advisable to purchase State bonds because they were greatly appreciated as compared with the currency. He therefore concluded to make what he considered as
merely temporary investments in confederate bonds. They were re-
206 garded by many of the most sagacious business men of the country as equally safe with any other securities. The executor honestly exercised the discretion vested in him by the court in purchasing them. If we are now to say that he is liable because he did not purchase State bonds rather than confederate, we must declare that he had no discretion in the premises; we must hold that whatever may have been the condition or the resources of the estate, or the encumbrances surrounding the executor, he could not make & the court could not authorize any disposition of the funds until this legacy was secured. At that time there were large claims against the estate which could not be paid. Until they were settled, however, the executor was under no obligation to pay legacies or make investments for legatees. He had the right under the sanction of the court to retain the funds under his control until the liabilities of the estate and the rights of all parties were settled & adjusted. If loss has thereby ensued, it is not fairly attributable to any breach of duty on the part of the executor, and the chancery court very properly so decided.

The appellants' exceptions to the commissioner's report, from No. 1 to No. 8, inclusive, also Nos. eleven, sixteen, seventeen, and nineteen, were properly overruled. In regard to the questions arising under the fifteenth exception there is more difficulty. That exception is based upon the failure of the executor to collect debts due the estate, or to institute any proceeding to secure the same. A list of these debts is reported by the commissioner, amounting to forty-eight thou-
sand five hundred & eighty-five $\frac{20}{100}$ dollars. One of the witnesses
207 examined, expresses the opinion that but little could have been realized from these claims, and that many of them were not recognized by the testator as existing debts. It seems, however, that a large number of the debtors reside now or did reside in Virginia, and

a majority of these is reported by the commissioner as good or in doubtful circumstances; and this is all the information we have upon the subject. The judge of the chancery court, in the course of his opinion, said "That, as to the claims in Virginia uncollected, no proof has been brought before me showing that any of these claims have been lost by the negligence or improper conduct of the executor." The learned judge is not entirely correct in his statement of the principle. The executor was bound to adduce the proof in his exculpation. When assetts are traced to his hands, it devolves upon him to show why they have not been collected, and not upon the legatees or distributees to establish misconduct or negligence. (Tebbs vs. Carpenter, 1 Mad. R., 290; Lauson vs. Copeland, 2 Bro. Ch. Cas., 130.)

It is not intended, however, now to decide any of the questions arising under this exception. There ought to be further enquiry as to the claims upon resident debtors, whether any of the debts reported as doubtful or worthless are now available, and whether the executor by instituting suits at any time since the death of the testator might have collected any of them or secured satisfactory liens upon real estate.

Appellants' exception noted in relation to the claim of R. D. James, the executor, against the estate, amounting to $5,760.13, was
208 properly sustained for the reasons given by the judge of the chancery court. No error was therefore committed in this particular to the prejudice of the appellee.

VIRGINIA:

In the supreme court of appeals, held at the State court-house in the city of Richmond, on Saturday, the 25 day of January, 1874.

ANN CROUCH, WHO SUES BY HER HUSBAND and next friend, William S. Crouch, and others, appellants,
against
RICHARD D. JAMES, EXECUTOR OF HECTOR Davis, dec'd, and in his own right, and others, appellees.

Upon an appeal from a decree pronounced by the chancery court of the city of Richmond.

This day came the appellants, by their counsel, and presented a petition asking the court to enter now an order overruling the petition for a rehearing presented to them in this cause at the January term, 1873; and it appearing to the court that the appellees have had notice of this motion, it is ordered that the same be docketed.

The petition referred to in the foregoing order is in the words and figures following, to wit:

To the hon'ble supreme court of appeals of Virginia:

The petition of Ann Davis and her children respectfully sheweth: That when the cause of Crouch et als. vs. Davis, ex'or, was decided by this hon. court, in January, 1873, your petitioners, by their counsel, asked that it might be suspended for awhile, in order to allow them the
209 opportunity to apply for a rehearing, the entry of the decree was so suspended, and on the 31st of January, 1873, your petitioners filed their petition for a rehearing, a copy of which is herewith submitted; that the decree was not entered until the day of April following, and your petitioners were informed that their petition had been overruled, as in point of fact it had, but they have only recently discovered within a few days past that no formal entry overruling it was made. They now desire to apply to the Supreme Court of the United States for a writ of error to the decree of this honbl. court, and they are advised it is very material to them that it should appear upon

the records of this honbl. court that their petition for a rehearing was presented before the decree was entered, and they therefore respectfully pray that the court will cause such an entry to be made upon its records as will show the facts as they occurred.

Jany. 22, 1874.

PETITIONERS, *by Counsel.*
JAMES LYONS, *for Petitioners.*

The petition for the rehearing in the foregoing case, referred to in the preceding petition, is in the words and figures following, to wit:

Supreme court of appeals of Va.

To the honorable supreme court of appeals:

Your petitioners, Ann Davis and her children, respectfully pray that this honorable court will grant them a rehearing in the case of
210 Crouch et al. v. Davis' ex'or, upon two points, to wit:

1. The investment of the assets of Davis' estate in confederate bonds; and—

2d. As to the effect of the investment, if sustained, upon the legacy of your petitioners, as well as that of the other legatees.

Your petitioners ask this rehearing most respectfully, because, as they are advised, the case is in some respects anomalous; and in other respects stands perhaps alone of its kind among the records of chancery decrees at the common law. It is anomalous in that it seeks to hold your petitioners bound, and to strip them of their property by an order made in a cause to which they were not only not parties, but when they were actually citizens and residents of another State; and your petitioners are advised that it is contrary to the doctrines and decisions of the common law to hold any persons bound by a decree or order made in a cause to which they were not parties, and of which they had not even knowledge, actual or constructive. And they are informed and advised that the Supreme Court of the United States has decided in the case of Dean v. Nelson, reported in 10 Wallace, p. 172, that such a decree, made when the parties to be affected by it were beyond the confederate lines during the war, was void and inoperative.

As your petitioners are advised, it is the first instance in which a court has assumed the power, as the chancery court is said to have done, to revoke a testator's will, when it was duly executed according to law, and was in all respects valid; because in the case of your peti-
211 tioners there was no difficulty whatever in investing the $20,000 devised to your petitioners according to the direction of the will. The statute provides that a court may direct a fiduciary to invest funds when he is "unable to pay them over to the cestuis que trust, or parties entitled thereto," and one of two things must follow therefrom: either that the statute did not apply to this case, as it seems to your petitioners it certainly did not, because it was not a case of "paying over" money, but an investment; or the investment must be regarded as the hand to receive, "to pay over to;" and in either event it could not truthfully be affirmed that the executor was unable to "pay over," and if not "unable to pay over," then the court has no jurisdiction of the subject; or it must follow, that when a cestui que trust was standing by and ready to receive, anxious that the trustee should pay over to him, still the court would have had the right to order his funds to be invested, even

against his protest, in confederate bonds; a conclusion which your petitioners respectfully submit nobody will maintain.

On the second point, your petitioners beg leave most respectfully to state, that they have been informed that this honorable court, in its opinion, has said or intimated that there is some distinction between the rights of your petitioners and of the other legatees under Mr. Davis' will, to the disadvantage of your petitioners; and if such be the fact, they beg most respectfully to be heard on that point, as nothing was said about it in the argument, and the greatest injustice would be done to your petitioners by such a conclusion, because they are advised
212 that no money was invested by Mr. Davis' executor in confederate bonds in their name or for their benefit; but such investments as he did make were made from time to time, in the name of the executor, in various sums, from one hundred dollars to thousands, amounting in the aggregate to $33,500. And your petitioners are advised that the law is, that money legacies abate equally and ratably; and if the legacies under Mr. Davis' will are to be abated, not by the insufficiency of the assets, but by the waste of them by the executor or by the order of the court, your petitioners respectfully submit that they are no more liable to be punished for these errors, by an abatement of their legacy, than any other legatee, but are entitled to share with all other monied legatees equally and ratably.

Your petitioners therefore pray most respectfully that they may be allowed a rehearing upon the points before metioned. Mrs. Crouch and her children respectfully submit, also, that if the court adheres to its opinion sustaining the investment in confederate bonds, they, the residuary legatees, are also entitled to share with the other legatees. (2 Williams on Executors, p. 1226; Dyose v. Dyose, 1 P. Williams, 305; ex parte Chadwin, 3 Swanst., 387.)

THE PETITIONERS,
By JAMES LYONS.
JO. LANE STERNE,
Their Counsel.

213 VIRGINIA:

In the supreme court of appeals, held at the State court-house, in the city of Richmond, on Wednesday, the fourth day of February, 1874.

On the petition of Ann Davis and her children by counsel, (it appearing to the court that the counsel of R. D. James, executor of Hector Davis, dec'd, has had due notice of said petition,) the court doth certify that, on the 29th day of January, 1873, the opinion and decision of this court were delivered and pronounced in the case of "Crouch, &c., *v.* Davis' Ex'or, &c.," in which Ann Crouch, who sues by her husband and next friend William S. Crouch, and her children, John G. Crouch, William M. Crouch, Algernon and Columbia Crouch, the last two of whom are infants, who sue by said William S. Crouch, their father and next friend, and Ann Davis, were appellants, and R. D. James, in his own right and as ex'or of Hector Davis, dec'd, Thomas J. Rutherford and Jenny his wife, Sally and Betty Davis, infants, Ann, a free woman of color and her four children, Jenny, Audubon, Victoria, and Matilda, infants, were appellees; that the said Ann Davis and her children, by their counsel, thereupon asked the court to suspend the entry of the decree in the cause for a short time to afford them an opportunity for filing a petition for a rehearing in the case, which was accordingly done; that, on the 31st day of January, 1873, such a petition was accordingly presented to the court, a copy of which is filed with the first above-mentioned petition as

part thereof; that the said petition for rehearing was afterwards fully considered and was overruled by the court; after which, to wit,
214 on the 22d day of April, 1873, the decree of this court in the said case of "Crouch, &c., v. Davis' Ex'or," &c., was entered; and that no entry was made on the record of the denial of the said petition, such entry being considered unnecessary, as the matter of the petition had been fully considered by the court before the decree was entered, and the petitioners had thus gotten the benefit of a rehearing, which was the object of their petition.

VIRGINIA:

I, George L. Christian, clerk of the Supreme Court of Appeals of Virginia, at Richmond, do hereby certify that the annexed printed record is a true copy of the printed record of "Crouch, (who sues,) &c., v. Davis' Ex'or & als.," and that the manuscript copies annexed are true copies of all the proceedings in said cause in said court of appeals.

Given under my hand this 27th day of February, A. D. 1874.

GEO. L. CHRISTIAN, *C. C.*

215 To the honorable the Supreme Court of the United States:

The petition of Ann Davis and her children Audubon, Victoria, & Matilda, infants, & T. J. Rutherford & Jennie, his wife, who was Jennie Davis, daughter of the said Ann, respectfully sheweth that the annexed is a transcript of the record of a case lately decided in the supreme court of appeals of Virginia, which is the court of last resort in that State, in which the said court affirmed a decree of the court of chancery for the city Richmond, by which your petitioners are very much aggrieved.

The case is fully stated in the record, and the petition to the court of appeals of Virginia, to which your petitioners beg leave to refer as if the same were made part of this petition. But the point upon which the jurisdiction of this honorable court must depend may be briefly summed up thus, to wit:

Hector Davis died in the city of Richmond, in the year 1863, having first made his last will and testament in writing, which has been duly admitted to record, by which he devised $20,000 to your petitioners, and directed his executor, R. B. James, to invest it in State stock of the State of Virginia; he devised $5,000 to the said James, and the residue of the estate to his sister, Ann Crouch, and her children. The
216 executor filed a bill in the circuit court of Richmond, which was afterwards transferred to the chancery court of Richmond, against all the devisees, for the purpose of having a settlement of the estate. In the absence of your petitioners, who were then and are now residents of the State of Pennsylvania, and without any actual notice to them, the court made an order, on the motion of the said James, authorizing him to invest all the money of the estate of his testator "in interest-bearing bonds or certificates of debt of the Confederate States or of the State of Virginia, or in any other sufficient bonds or securities in said State," the same to be made payable to the said executor. (See p. 13 & 14 for the copy of the will, and p. 18 for the last-mentioned order.)

Ann Crouch and her children subsequently filed their bill against the executor and the same devisees, for the purpose of getting a settlement and distribution of the said estate. (See p. 19; also the answer of the ex'or.) After various proceedings were had, and accounts taken, your

petitioners filed their answer in the said cause, protesting against the validity of the order before mentioned, and the investment of their money, $20,000, in confederate bonds. (See p. 123.) Finally,
217 upon the settlement of the accounts of the executor, he claimed and was allowed credit for the said investment of $20,000, and much more, in confederate bonds, the whole of which was lost by the fall of the confederacy. Upon the return of that account, all the divisees excepted to the said allowance for the investment aforesaid. (See p. 10.)

The court overruled the exceptions, and confirmed the report, thus sustaining the investment by which the whole legacy to your petitioners was lost, and the supreme court of Virginia affirmed the decree of the chancellor in that, as well as in other respects, as appears by the transcript of the record aforesaid.

In its opinion, the supreme court of Virginia, in turn, recognizes the fact that your petitioners were alien enemies, and sustained on that ground the investment of their legacy in confederate bonds. Nevertheless, your petitioners again presented the question to that court by a petition for a rehearing, especially charging that the order under which the investment was made was void as to them by the authority of the case of Bean vs. Nelson, reported in 10 Wall., p. 172; but the said supreme
218 court overruled the said petition and re-iterated its said decree, affirming the validity of the order as against your petitioners.

Your petitioners, therefore, pray that an appeal may be allowed them from the said decree of the supreme court of appeals of Virginia, and a writ of error awarded them.

Petitioners by their counsel.

JAMES LYONS,
Counsel for Petitioners.

(Indorsed:) Crouch v. Davis. Petition for writ of error. Writ of error allowed upon petitioners' giving bond in $250.00. N. H. Swayne.

219 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of appeals of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Ann Crouch, who sues by her husband and next friend, William S. Crouch, and her children, Jno. G. Crouch, Wm. M. Crouch, Columbia Crouch, & Algernon Crouch, the last two of whom are infants, who sue by the said Wm. S. Crouch, their father and next friend, and Ann Davis, are plaintiffs, and Richard D. James in his own right and as ex'or of Hector Davis, dec'd, T. J. Rutherford, Jennie his wife, Sallie & Bettie Davis, infants, Ann Davis, a free woman of color, and her children, Audubon, Victoria, and Matilda, who are infants, defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their
220 validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the

title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Ann Davis & her children, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the thirteenth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

(Signed) D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Issued 23 July, 1874.

Allowed by—

N. H. SWAYNE,
Asso. Jus. Sup. Court, U. S.

221 The United States of America to Ann Crouch, who sues by her husband & next friend, William S. Crouch, & her children, John G. Crouch, William M. Crouch, Algernon & Columbia Crouch, the last two of whom are infants, who sue by said Wm. S. Crouch, their father & next friend, & Richard D. James, in his own right, & as ex'or of Hector Davis, dec'd, & Jennie Davis, Sallie Davis, and Bettie Davis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein Ann Davis and her children, Audubon, Victoria, & Matilda, infants, and Jennie, his wife, who was Jennie Davis, daughter of the said Ann, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable N. H. Swayne, associate justice of the Supreme Court of the United States, this sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

N. H. SWAYNE,
Asso. Jus. Sup. Court, U. S.

I acknowledge service for all the defendants, except R. D. James, as ex'or, and in his own right, Jennie Davis, Sallie & Bettie Davis.

JAMES LYONS,
Att'y at Law for the said D'f'ts.

The United States of America to Ann Crouch, who sues by her husband & next friend, William S. Crouch, & her children, John G. Crouch, William M. Crouch, Algernon and Columbia Crouch, the last two of whom are infants, who sue by said Wm. S. Crouch, their father & next friend, & Richard D. James, in his own right, & as ex'or of Hector Davis, decd., Thos. J. Rutherford, & Jennie his wife, Sallie Davis and Bettie Davis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein Ann Davis and her children, Audubon, Victoria, & Matilda, infants, & Jennie Davis, daughter of the said Ann, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable N. H. Swayne, associate justice of the Supreme Court of the United States, this sixteenth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

(Signed) N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

I acknowledge service for all the defendants except R. D. James, as ex'or, and in his own right, & Jennie Davis, Sallie and Bettie Davis.

JAMES LYONS,
Atty at Law for the said Dfts.

We acknowledge service for R. D. James in his own right and as ex'or of Hector Davis, deceased.

JOHNSTON, WILLIAMS & BOULWARE,
Attorneys at Law for R. D. James.

We acknowledge service for T. J. Rutherford, & Jennie his wife, & for Sally Davis & Betty Davis.

GUY & GILLIAM,
Attys. for these Parties.

223 Know all men by these presents, that we, Ann Davis and are held and firmly bound unto R. D. James, executor of Hector Davis, deceased, R. D. James in his own right, and Sallie, Bettie, & Jennie Davis, in the full and just sum of two hundred and fifty dollars, to be paid to the said James' executor, & in his own right, and the said Sallie, Bettie, & Jennie Davis, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this [SEAL.] twentieth day of May, A. D. 1874, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a supreme court of appeals of Virginia, in a suit depending in said court between the said Ann Davis and her children, Jannie, Victoria, & Auduben, & Ann Crouch & her husband, Wm. S. Crouch, & their children, against the said R. D. James, as executor, as aforesaid, and in his own right, & the said Sallie, Bettie, & Jennie Davis, a decree was rendered against the said Ann Davis and her chil-

dren: and the said Ann Davis, having obtained a writ of error & supersedeas, and filed a copy thereof in the clerk's office of the said court, to reverse the decree in the aforesaid suit, and a citation directed to the said defendants, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

[SEAL.]

Now the condition of the above obligation is such, that if the said Ann Davis shall prosecute the said writ of error to effect, and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

her
ANN + DAVIS. [L. S.]
mark.
VICTORIA DAVIS. [L. S.]
WALTER RICE. [L. S.]

Sealed and delivered in presence of—
JOSEPH MERCER, as to Ann Davis.
JOHN WILEN,
AUDUBEN DAVIS,
JOHN DUMAS.

Approved by

M. R. WAITE, *Ch. Justice.*

224 STATE OF PENN'A, *City of Philadelphia, to wit:*

I, Joseph Mercer, a notary public for said city, in said State, do hereby certify that Walter Rice, whose name is signed to the within bond is surety, this day appeared before me and made oath that he is worth the sum of two hundred and fifty dollars after the payment of his just debts, and all that for which he is bound for others and expects to have to pay.

Given under my hand the 20th day of May, 1874.

JOSEPH MERCER,
Notary Public.

STATE OF PENN'A, *City of Philadelphia, to wit:*

I, Joseph Mercer, notary public for said city, in said State, do hereby certify that John Meller this day appeared before me and made oath that he is personally acquainted with Walter Rice, who is the surety in the within bond, and that he believes that the said Walter Rice, surety, is worth the sum of two hundred and fifty dollars after the payment of his just debts, and these for which he may be bound for other' and expects to have to pay.

Given under my hand this 20th day of May, 1874.

JOSEPH MERCER,
Notary Public. N. P.
JOHN MELLOE.

225 And at another day, to wit, July 27, 1874, the said Ann Davis and her children filed in the clerk's office here the writ of error, which said writ with the petition upon which the same was allowed and the citation thereon are annexed to this record. And the said Ann Davis and her children filed in the clerk's office here a copy of said writ of error and citation, and also filed a bond, the original of which now remains in this office, and a copy of which here follows, to wit:

Know all men by these presents that we Ann Davis and ——— are held and firmly bound unto R. D. James, executor of Hecter Davis, deceased, R. E. James, in his own right, and Sallie, Bettie, and Jeanie Davis in

the full and just sum of two hundred and fifty dollars to be paid to the said James, executor, and in his own right, and the said Sallie, Jennie, & Bettie Davis, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this twentieth
226 day of May, A. D. 1874, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately at a supreme court of appeals of Virginia, in a suit depending in said court between the said Ann Davis and her children, Jennie, Victoria, and Audubon & Ann Crouch, and her husband Wm. S. Crouch, & their children, against the said R.D. James, as executor as aforesaid and in his own right, and the said Sallie, Bettie, & Jennie Davis, a decree was rendered against the said Ann Davis and her children, and the said Ann Davis having obtained a writ of error and supersedeas, and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said defendants, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said Ann Davis shall prosecute the said writ of error to effect, and answer all damages and costs if she fail to make her plea good, then the
227 above obligation to be void; else to remain in full force and virtue.

her
ANN + DAVIS. [L. S.]
mark.
VICTORIA DAVIS. [L. S.]
WALTER RICE. [L. S.]

Sealed and delivered in presence, as to Ann Davis, Joseph Mercer, John Wilen, Audubon Davis, John Dunn.

Approved by—

M. R. WAITE, *Ch. Justice.*

STATE OF PENNA., *City of Philadelphia, to wit:*

I, Joseph Mercer, a notary public for said city, in said State, do hereby certify that Walter Rice, whose name is signed to the within bond as surety, this day appeared before me and made oath that he is worth the sum of two hundred and fifty dollars after the payment of his just debts, and all those for which he is bound for others, and expects to have to pay.

Given under my hand this 20th day of May, 1874.

[NOTARIAL SEAL.] JOSEPH MERCER,
Notary Public.

228 STATE OF PENNA., *City of Philadelphia, to wit:*

I, Joseph Mercer, a notary public for said city, in said State, do hereby certify that John Mellon this day appeared before me and made oath that he is personally acquainted with Walter Rice, who is the surety in the within bond, and that he believes that the said Walter Rice, surety, is worth the sum of two hundred and fifty dollars after the payment of his just debts, and those for which he may be bound for others, and expects to have to pay.

Given under my hand the 20th day of May, 1874.

[NOTARIAL SEAL.] JOSEPH MERCER,
Notary Public.
JOHN MELLON.

Wherefore I, George L. Christian, clerk of the supreme court of appeals of Virginia, at Richmond, in answer to the foregoing writ of error, return the record and proceedings aforesaid with all things
229 conce rning the same to the Supreme Court of the United States, and I hereby certify that the same is a transcript thereof.

In testimony whereof I hereunto subscribe my name and annex the seal of the said court at Richmond, on this twenty-seventh day of July, in the year of our Lord eighteen hundred and seventy-four.

[SEAL.] GEO. L. CHRISTIAN, *C.*

(Indorsed:) Virginia sup. ct. of appeals. No. 208. Ann Davis et al., plaintiffs in error, vs. Ann Crouch et. al. Filed 23 October, 1874.

In the Supreme Court of the U. S.

DAVIS ET ALS vs. CROUCH ET ALS.

Statement of the Case for the Plaintiffs in Error.

Hector Davis died in the city of Richmond, in the year 1863, after having made, in the year 1859, his last will and testament, in writing, which will be found at page 11 of the record. His will was admitted to probate in Richmond on the 13th of March, 1863. The value of his personal estate, exclusive of his realty, and all debts due to him, was $91,020; see page 12. By his will he made the following bequests. 1. To his nieces, Sallie, Jennie, and Bettie Davis, the sum of $15,000 to be equally divided between them; to your petitioner, Ann, her freedom, to be removed out of the State of Virginia, with her children, Jennie, Audubon, and Victoria, and after their removal the sum of $20,000, "the whole amount to be invested in State stock by my executor, and applied as aforesaid, the interest to be divided one-fifth to Ann, and the balance expended in raising and educating the children until they became of age, and then the principal to be given them;" to his nephew, R. D. James, the sum of $5,000; and whatever balance "I may be worth," he devised to his sister, Ann Crouch, and her children.

James qualified as his executor, and gave bond in the penalty of $200,000.

The executor filed a bill in the court of chancery at Rich-

mond in the year 1865, November, in which he made all the devisees and legatees defendants, the object of which was, as alleged, to have a settlement and distribution of the estate. He filed with the bill a statement, in writing, of the real estate left by his testator, valued at $17,335.

It appears that the executor had filed a previous bill in the same court, which, with the papers connected therewith, were destroyed during the war, by the great fire in Richmond in the month of April, 1865.

Subsequently Ann Crouch and her children filed their bill against the said executor, for the purpose of obtaining possession of the real estate devised to them, and which had been previously directed by an order in the cause to be delivered to them.

In March, 1865, the court of chancery, at the instance of James, the executor, made an order in these words, "And the court doth grant the said Richard James, executor as aforesaid, leave to invest the cash on hand belonging to the estate of his testator in interest-bearing bonds, or certificates of debt of the Confederate States, or of the State of Virginia, or in any other sufficient bonds or securities in said State, which said bonds or securities are to be payable to the said executor, and are expressed on their face that the same are not transferrable except by the order of some circuit court of competent jurisdiction."

At the time that this order was made the executor had in his hands, as he admits, a large sum of money belonging to the estate; but under a similar order made in 1864, he invested $35,433.21 in Confederate bonds, as is shown by his account rendered under a decree of the chancery court, and never did invest one cent in State stock for the benefit of your petitioner, as by the will he was directed to do. See p. 118.

The executor was directed to render an account of his transactions as executor before a commissioner in chancery, which he did, showing that after the payment of the debts

of the testator, and allowing himself credit for all his investments in Confederate bonds, amounting to about $40,000, there was a balance due from the executor on the 3rd of of April, 1865, of $13,723.12 principal, and $312.50 of interest, on one account called account "A. A.," and on another account called "C. C.," of $3,992.88 principal, and $240 of interest; and discarding those investments in Confederate money, the balance would be $47,331.94 of principal, and $312·50 of interest, and $5,404.28 principal, and $240 interest.

Numerous exceptions were filed to the report of the commissioner by your petitioners, especially to the investments made by the executor in Confederate money instead of State bonds, as directed by the will of the testator Davis. The exceptions will be found at pages 59, 82, 105, and 116.

The executor, instead of investing the $20,000, which he was directed by the will to invest for your petitioner and her children in State stock, invested it in Confederate money, which he pretends to justify by the order of the court before referred to; but the court will find at page 88 of the record, a letter from James, the executor, to the daughter of your petitioner, to wit, Virginia Davis, in which he admits that, although directed by the will to make the investment in State stock, he refused to do it, because he thought such an investment would be unjust, and does not pretend that he was forced to make the investment by any of the causes mentioned in the act of Assembly as justifying or excusing an investment in Confederate bonds.

The chancery court overruled the exceptions, and confirmed the commissioner's report; and the Court of Appeals of Virginia affirmed the decision of the chancery court.

This decree of the Court of Appeals of Virginia, your petitioners submit, is erroneous, and ought to be reversed and annulled; and by their counsel they respectfully submit the following considerations in support of this view:

I. The law declares that the first duty of an executor,

after the payment of funeral expenses, is to collect and then to pay the debts of the testator. 2 Williams on Ex'ors, 890, *et seq.* 1 Lomax on Ex'ors, 609. 2 Lomax on Ex'ors, 475.

II. When the testator by his will directs the manner of investment, that is, the security in which investments shall be made, the executor is bound to follow the will, and if he does not, is guilty of a devastavit, for which he and his securities are responsible out of their personal or private estate. 2 Williams on Executors, title Devastavit, 1628–'9, 36; ibid, p. 1642–'3; 1667. 2 Lomax on Executors, 475, 82, 83. *Garrett et als.* v. *Carr*, 3 Leigh, 407, 414. *Carter's Ex'or* v. *Cutting*, 5 Mun. 223. *Southall's Adm'r* v. *Taylor's Adm'r*, 14 Grat. 259.

It was the duty, therefore, of the executor to have paid all the debts which were payable in Confederate money, or if the parties refused to receive payment to bring evidence of the fact, so that they might be dealt with as creditors who had been tendered payment and refused, and thereby lost their right to recover. There certainly was no conceivable excuse for seeking investment of the assets, while this plain duty was unperformed, and especially the executor's own debt unpaid; and there could be no "embarrassing circumstances" to excuse him for not paying the debt, or to render his duty difficult or uncertain; his path was plain and simple: it was to pay the debts and invest the legacy as the will directed. The will directed that $20,000 bequeathed to Ann Davis should be invested in State stock. There was no embarrassment or difficulty here; the duty was clear, the path plain, and there were no "embarrassing circumstances."

III. The debt due by the testator to the executor on account of the partnership, even if not paid by the legacy to him, was undoubtedly payable in Confederate currency—the currency of which the partnership assets consisted, and none other. That James was a partner, see p. 98 of record, and the note for commissioner, with authorities, page

101. It is impossible for men to divide profits without being liable for losses, and thus partners, and, being partners, it follows:

1. All the partners have a community of interest, joint and inseparable, in all the profits of the concern. Story on Partnership, ch. 3 § 15–20 *et seq.* Each partner must share profits and losses according to his interest. § 21.

2. Partnership property may be realty, personalty, funds or money. Story on Partnership, §§ 92, 3, 4, 8,

3. One partner cannot appropriate any portion to himself exclusive of the partnership. § 174.

4. A partner cannot be a creditor of the firm, therefore, for profits, and can only be a creditor of his partner for excess of advances by him, or when the co-partner has received all the assets, including his share of the profits.

5. A partner of the firm cannot prefer a claim while strangers, who are creditors of the firm, are unpaid. § 39 to 307 of Story.

The foregoing principles establish necessarily and conclusively that James must take his share of the profits in the *thing*, whether money, funds or realty, in which the profit was made, or, if he claims gold, he must pay gold to Davis. His share of the profits is no *debt* against the firm, for that would be absurd, and no debt against Davis, for Davis is liable to him for profits no more than he is liable to Davis, and neither party guarantees profits. If the profits are made in bad paper, each partner must take his share in the bad paper, and then *he* may do with it what *he* pleases, and what he makes of it is his own, but his *partner* is not responsible for it; otherwise, if one partner is entitled to one-third, and the other entitled to two-thirds, the one entitled to two-thirds would ruin him entitled to one-third; for, for every $100 guaranteed to him entitled to one-third, he must guarantee $200 to the one entitled to the two-thirds. Community of interest forbids this. Mr. James had in his hands at all times a sufficient amount of money of the kind due to him

to pay his debt, and thousands of dollars of others; and by neglecting to do so, and making illegal and unwarranted investments, he has lost his debt, and is responsible for all the others of like nature which he could have forced the creditors to take, or show an attempt to do so and refusal, which will forever bar their claim. Debts have priority over legacies.

IV. As to the debt reported by the commissioner as due to Holladay (see page 58 of record), to wit: "by bond of Henry Jones with Hector Davis as *surety*, dated 23d November, 1860, payable January 1862, with interest from 1st January 1862, $17,500."

Exception No. 11, as to this debt (page 4 of record), should have been sustained for the reasons there stated. Davis was surety. His executor when he qualified received $91,000 of personalty; the special legacies amounted to $40,000 only; this would have left him $51,000 to pay his testator's debts with, exclusive of amounts receivable on debts due to his testator (see bill of executor, page 21.) What did he do with this enormous amount of money? He has not shown that Holladay refused it; he has not shown that he in any way suggested to Jones that his debt to Holladay was due, or that he took any step whatever to relieve his testator's estate of this burden. He says, in his deposition, that the negroes purchased from Holladay had been carried south by Jones to be sold, and that he had never made any returns; yet he does not show any attempt on his part to require an account from Jones, or to require him to sell them if he had not done so, and thereby pay the debt. Now the principle of law so familiar from the repeated decisions in England by Lord Hardwicke, and so beautifully followed up by the recent decision of this honorable court in *Zetelle* v. *Myers*, 21 Grattan, p. 733, is, that in such a case as this, the person occupying the position which James does must do what a man careful in the protection of his own interests would have done. "He must act as a judicious

man, looking alone to his worldly interests, would under the circumstances, pursue in his own affairs." This is the strongest language which can be used in defence of the executor in this case, and he has failed utterly so to conduct himself as to be shielded by it. "They (executors) must use diligence, and not suffer the estate to be injured by their neglect." It cannot be denied that this estate has suffered, and that too, by the most palpable neglect.

By the accounts it will be seen that the executor, after, as he alleges, both creditors and legatees had refused to accept Confederate money, yet continued to receive it in payment of debts due his testator.

Now, would a right-minded man acting for himself have done this?

Myers did for Zetelle what he did for himself. If James had done this he would have taken what was due from the estate to him and invested it in Confederate bonds in his own name. The Confederate investments should, therefore, be regarded as covering the entire debt and legacy claimed by the executor.

Since the termination of the war Jones has voluntarily sent on to Virginia $5,960, to be used towards the payment of his debts. (See page 47.) At pages No. 93–94 of the record, will be found two letters from Mr. Jones to Mr. Holladay, in both of which he alleges that $3,000 of that amount were paid to James, with directions to pay it to Holladay on the note; and his letter of January 27th, 1867, shows that he holds such a receipt. James files what he says are copies of the two receipts given to Jones, one for $3,000, and the other for $2,960.80 (see page 100). He says (page 99) these copies were made at the time the receipts were given. The copy as here given omits some word or words, and does not indicate for what purpose the $3,000 were to be applied, but says: "Said amount to be applied to the payment of partnership accounts—himself and Hector Davis, dec'd." But at page 47 it will be seen that

the $2,960 were received December, 1866, and the $3,000 January 15, 1867. The copy of the receipts filed in the papers are both written on the same paper, were evidently written at the same time, and dated December 10, 1866, while Jones' letter of January 27th, 1867, says the $3,000 were collected last March (1866).

It is plain that James failed to use this money as was intended, and tries to cover up the matter by ambiguous papers and incorrect statements, which the facts and figures disprove. Thus, another $3,000 has gone towards the payment of some Confederate debt, while the $17,500 debt still stands, and James seeks to charge the real estate of Mrs. Crouch with its payment. He should be charged with the $3,000.

It is very reasonable to suppose that a man who could send nearly $6,000 in good money from Texas to Virginia in less than a year after the expiration of the war, could, if called upon during the war, have paid an obligation of $17,500 in Confederate currency; or if it was a joint obligation, could have paid his portion, or could have paid it since. It was a fault in James not to ask for it then, and he does not show now that Jones is insolvent.

As already shown, the personal assets of Davis amounted to $91,000, exclusive of debts due to him, which swelled the assets to more than $100,000. When Davis died, Confederate money was at a discount of five for one, which would make the excess of $60,000 above the legacies equal to 12,000 in good money, which, added to the amount paid by Jones, would have paid off the debt due to Holladay, if that amount had not been applied to the payment of such debts due by Davis as were payable in Confederate money. The executor could, however, without difficulty, have instituted proceedings in Texas, either during the war or since, to secure from Jones the payment of this debt, which, as already shown, there was every reason to believe he might have done successfully; yet he has taken no such step.

Again; it was his duty to have notified the holder of Holladay's debt to take such steps as he might take for the recovery of it; and if he had he would doubtless have done so, and thus Jones' ability to pay tested; yet he did nothing, but suffered the estate of his testator to remain subject to the liability, without a single effort of any kind to relieve it. Such conduct, according to plain and well-settled doctrines of a court of chancery, makes the executor responsible for all the losses which may be sustained by his negligence in this respect.

V. As to the $1,000 paid Bowcock (see exception 1, page 2), the exception should have been sustained and the amount charged to the executor, for reasons there stated. See Elmore's deposition, cross-examination, page 72, questions 6, 7, and 8. The executor is silent as to the cause of sending Bowcock to Arkansas; does not show any benefit that the estate derived from it; exhibits no report from him, as according to the receipt (page 120) he was to return; and this is enough to show that he was not the proper person to send, even if necessary to send any one, which is not shown, and, above all, the executor had no control over the property in another State. This is admitted by the counsel for James, page 102 of record, who say he was "not accountable" for debts due from residents of other States. Is this the manner in which a man in his senses would have acted for himself? Did an executor ever before attempt to screen himself in such a way? Not to attempt to collect a cent in another State, because he was "not accountable" for such debts, but yet advanced money to a man to go to another distant State with no purpose in view and no good accomplished by it. Mr. James should be charged with the amount thus furnished his friend for a pleasure trip; for such it must have been, as he has never come back, and made no report of any business done by him, as far as we know, nor has the executor furnished any statement or description of the property left by Davis out of Virginia, or, in fact, that he left any.

VI. It was the duty of the executor to have sold all the bank stocks, and all the fancy stocks of the estate, and all the Confederate bonds which came to his hands, and with the proceeds of them to have satisfied the legacies and such debts as were payable in Confederate money, and, failing to do so, he is responsible for the loss of those stocks. To retain those stocks was equivalent to investing the assets of the estate in them ; and while a man may invest his own money in such securities, an executor or administrator cannot) except under the penalty of being liable for the amount invested, if the stocks fail. This is the law even when the question is as to the investment of a surplus fund, but it applies with much more stringency in a case like this, when there were legacies, as well as debts, to the satisfaction of which those stocks, or the proceeds of them, should have been applied, among which were the debts and legacy due to the executor himself. It was the duty of the executor, therefore, to sell those stocks :

1st. Because it was matter of notoriety, that if the Confederacy failed they would be utterly lost.

2ndly. Because the debts and legacies required it.

3rdly. Because the will directed $20,000 to be invested, not in bank stock or fancy stocks, but in the stock of the State of Virginia.

4thly. Because the devisees of the real estate were entitled to have it exonerated from liability for debts and legacies.

5thly. Because, if debts and legacies could not be paid with the proceeds of those stocks, it was the duty of the executor to sell them, and lend their proceeds out on real security. 2 Williams on Executors, p. 1629, note 1; Brazier & Clark, 5 Pickering, 96 ; 2 Lomax on Executors, p. 477.

At pages 11 and 12, the court will see that the loss to the estate by the failure of the executor to sell these stocks, was $69,440, at least $29,000 more than enough to have paid all the legacies.

VII. It being, as already shown, the duty of the executor to collect the debts due to his testator, he is responsible, and must account for all that he does not show to have been bad, at least for all of the Virginia debts; and he does not show, as to a very large number of them, any excuse for the failure to collect them. On the contrary, in account "E," commencing at page 51 of the record, summed up at page 56, he puts down the doubtful at $27,534.21; probably good at $2,444.44; making $29,978.65; and among the debts marked doubtful, is one by N. M. Lee & Co., of $3,839.70, and another from N. M. Lee alone, of $14,760.12 (see page 57), when that same N. M. Lee was so good as to be offered by him as one of his securities on his executorial bond, and received by the court; and yet no attempt was made to recover either of those debts until they were lost by the bankruptcy of Lee. Those two debts could not have been even doubtful, therefore, without imputing to the executor the purpose of practising a fraud upon the court by offering Lee as security upon a bond of $200,000. The executor is, therefore, responsible for that debt; and by this specimen the list of doubtful debts may be judged, and the wisdom of the rule, which makes the executor liable for them, vindicated.

Again, this same N. M. Lee gives his deposition at pages 96,–97, in which will be found a list of the Virginia debtors. There are eighty-four of them: fifty-seven are marked doubtful; twenty are marked good; three are marked unknown; two are marked probably good; and only two are marked worthless.

The total amount due by all debtors, marked doubtful, is $27,534.21, of which the fifty-seven "doubtful" residents of Virginia owe $23,357.45 in Federal money. It seems from this that the executor has not so prosecuted the Virginia debts as to know whether they are good or not, and has marked doubtful fifty-seven out of eighty-four.

The worthless debtors in Virginia are only two in num-

ber, and their indebtedness $988,74, while the total amount marked worthless is $10,082.34. How does the executor know so much about the non-residents unless he has brought suit? And he says he has not. The fact is, he reports positively as to non-residents; and as to the residents, who, in amount, are largely in the majority, he reports doubtful, yet alleges non-residence as a reason for not knowing the debtor's responsibility, and declining to attempt collections because he is "not accountable" for debts due by non-residents.

Mr. Lee is wrong in stating as he does, (page 97, question 15), that "nearly all of the debtors lived in the Southern States;" and the judge, in his opinion, makes the same mistake. The Virginia debtors, in amount, are more than one-half, and yet he did not sue one of them.

The defence set up by the learned counsel for the executor to excuse him from his liability for his failure to make an effort to recover debts, of which the worst he can say of them is that they are doubtful, which admits that they might by proper pursuit be recovered, a chance from which the estate was entirely cut off by the laches of the executor, is reliance upon the stay law, and assuming that it prohibited the executor from suing. The court will find, however, that the statute of March 29, 1862, which was in force when Davis died, did not prohibit suits, but only prohibited the issuing of executions, except in certain cases, and expressly authorized proceedings to recover interest upon debts. See pages 95–97 of Sessions Acts 1861–'62. So that there was nothing to prevent the executor from recovering judgments and thus obtaining liens, or from recovering annual interest. And there is not in the record, even at this date, one particle of proof showing that the doubtful debts are not still good, or were not good at the close of the war. The simple assertion of the executor upon that subject being no proof, as it is no proof of his allegation that he offered to pay debts and legacies in Confederate money, and creditors and legatees declined to receive it.

VIII. That Confederate debts were payable in Confederate money, has been so distinctly and fully settled by this court that there is no occasion to discuss the question, indeed, it does not admit of discussion ; but it is denied that the legacies were payable in Confederate money.

The rule upon that subject is thus laid down by Williams in his book on Ex'ors, Vol. 2, p. 1292: "Upon this subject the intention of the testator, as apparent upon the construction of the will, is to furnish the rule of decision. But where legacies are given generally, it will be presumed that the testator intended that they should be paid in the money of the country in which he was domiciled and the will was made, without regard to the currency of the place where the legatees reside. 16 Sim. 613; 10 Ves. 330 ; 2 Bro. C. C. 38 ; Prec. Chan. 201; Id. 226; 2 Lomax on Ex'ors, 264, (top,) 151 (marg.); 1 Roper on Legacies, ch. 14, § 2, 856.

The rule thus expounded is as applicable to the present case as to any other. It is not to be presumed that it was the intention of the testator, who was a southern man, resident in the South, and whose will by the settled rule of interpretation speaks from his death except as to land, that his legacies should be paid in any other than the currency of the country in which he was domiciled at the time of his death, and of which he was a native.

That he did not intend that it should be paid in Federal money is as perfectly certain as anything of the kind can be, because there was no Federal money in Virginia, and no means of getting it, and to have gotten it, would have been treason by the statute.

It is equally certain that he did not intend them to be paid in specie, because there was not specie in the country to meet all the demands of circulation, and it was not more customary to pay either debts or legacies in specie in 1859, than it was in 1863, bank notes having taken the place of specie in 1859, and Confederate treasury notes in 1863. In what currency then, can it be presumed, with any show of

reason, that the testator intended his legacies should be paid, if not in Federal money or in specie?

What is there then to rebut the presumption which the law raises, so much in accordance with common sense and the inevitable necessity of the case, to wit: that the testator intended that the legacy should be paid in the currency of the country in which he was domiciled and always had been.

To be able to presume that he did not intend it to be paid in that currency, it is absolutely necessary to indicate some other currency to which the evidence points, as the currency which was in the contemplation of the testator; now, I ask again, what is that currency, it being shown that neither Federal money or specie could have been in the contemplation of the testator; and until that is done, we think we may rest perfectly content with the position which the authorities cited, and the reason of the case, justify us in assuming that the legacy was to be paid in the currency of the country in which the testator was domiciled at the day of his death, or not to be paid at all.

IX. Both the legacy and the debt due to the executor were payable in Confederate money. That money was at home in the hands of the creditor, and, therefore, upon the plainest principle of common sense and law, they are to be considered as paid; and to that extent any loss of funds by investment or otherwise is necessarily the loss of the executor. If that were not true, then this extraordinary anomaly would occur, to wit: that when an executor, who is both creditor and legatee, squanders the assets of an estate, he may turn around and sue his own security for the legacy and the debt, upon the ground that he has committed a *devastavit* in not paying himself.

X. The executor is bound to restore the Richmond city bonds which he sold; otherwise, this other anomaly would exist, that when an executor had Confederate paper and Confederate securities, with which he might have paid debts and costs of administration, he would be allowed to hold them until they were lost, and sell permanent securities.

XI. The bequest of $15,000 to Jennie, Sallie and Bettie Davis, ought to be considered as a satisfaction of the debt due to them, and if not, then, as that was a debt entitled to priority over all others, it was the duty of the executor to have sold all the slaves, bank stocks and other stocks except those of the city of Richmond and the State of Virginia, and if necessary to have purchased with them so much good money as would have paid the debt due to the wards, and to have paid it, and for his failure to do so the executor is personally liable for the loss of the money.

XII. That the real estate is not liable for the legacies if the personal estate was insufficient to pay them, nor for any simple contract debt.

XIII. That the court of chancery erred in overruling the exceptions of the appellants, which will be found commencing at page 6 of the record.

The ground of relief relied upon, that the executor retained in his hands all the stocks and slave property which came into his hands, instead of being a justification, is a plea of guilty; for the law is laid down in the most unmistakable terms in Lewin on Trusts and Trustees, pp. 297–'8, in which it is said, quoting Sir Thomas Plummer in *Tebbs* v. *Carpenter*, 1 Mad. 290: "I am anxious not to discourage persons from acting as executors by throwing difficulties in their way, and am willing to make every proper allowance; but I must not forget the established doctrine of this court. *If persons accept the trust of executors, they must perform it; they must use due diligence, and not suffer infants to be injured by their negligence. If there be* CRASSA NEGLIGENTIA, *and a loss sustained by the estate, it falls upon the executors.*" "An executor is not to allow the assets of the testator to remain outstanding upon *personal* security, though the debt was a loan by the testator himself, in what he considered an eligible investment. And it will not justify the executor, if he merely apply for payment through his attorney, but do not follow it up by instituting legal proceedings," citing *Lawson* v. *Coleman*, 2

Bro. C. C. 136; *Powell* v. *Evans*, 6 Ves. 139; *Southall's Adm'r* v. *Taylor et als*, 14 Grat. 269.

Certainly there could not be *crassa negligentia* in an executor or a trustee, if this was not—to hold bank stocks, railroad stocks, insurance stocks, and Confederate bonds and slaves, until they were lost, while he suffered debts and legacies, which might have been paid by the sale of them, to remain unpaid—a charge upon the estate, those assets constituting more than three-fourths of the whole value of the estate. To state such a case, is to make it as plain as any argument can make it.

Again, it is said that the Confederate money which the executor received could not be paid to creditors who were unwilling to receive it, and that it could not be paid to legatees, or invested for their benefit, until the debts were paid.

To this there are several answers, to wit:

1st. That there is not a particle of proof that payment was ever tendered to any creditor, and refused by him.

2ndly. That all Confederate creditors were bound to accept it, and tender to them was equivalent to payment; and there appear to be only two debts of any magnitude which might not have been paid with Confederate money, to wit: the debt of Holladay's executor, and to the Davises, which will be noticed again.

3rdly. Payments might have been made to legatees, and refunding bonds taken, and there is no proof that any attempt was made thus to settle with the legatees.

4thly. The will furnished to the executor the rule of investment by which he should have been and was conclusively bound, viz: the investment in Virginia State stock, and if he could not invest for *legatees*, as he says, he could for *creditors*. But this is a singular argument in a case in which the executor *did invest*, and claims protection by the investment. There is no question, therefore, of the *power* to invest. The question is as to the propriety of the investment. We say it was bad; the executor says it was good;

and we will presently give the reasons and authorities to sustain our view.

In answer to our position that the legacies are not chargeable upon the real estate, the counsel for the appellee cite numerous authorities, for the purpose of showing that the lands were chargeable with the legacies.

Special comment upon them is unnecessary, because one or two principles, very well understood, which properly apply to this case, settle the whole question, which will be found in the very familiar and favorite authority in Virginia, to wit: Lomax on Executors, vol. 2, top paging 163, marg. 84, § 8, top p. 170, marg. 90, ed. of 1857.

First, it is laid down that money legacies are payable only out of the personal estate; and, secondly, that the real estate will not be charged with the payment of legacies unless that intention is expressly declared or clearly to be inferred from the language and disposition of the will, and that a simple bequest does not have that effect. For this the learned compiler refers in the case of *Lupton* v. *Lupton*, 2 Johns. C. R. 615; the decision in which, he says, coincides with the more recent decisions and the present doctrines in England, and he refers to many authorities.

In *Lupton* v. *Lupton*, it was decided that a residuary devise of "all the rest of his real and personal estate not before devised is not sufficient to charge the real estate with pecuniary legacies." Now in this case the language of the testator is, "whatever balance I may be worth I want given to my sister, Ann Crouch, and her children." This is manifestly a residuary bequest and nothing more, in the language of a man *inops consilii*, not using the most accurate expressions, to be sure, but leaving a large estate out of which he gave a few legacies, not amounting to the half of it, nor indeed the third of it. He never had it in contemplation to charge the real estate, but intended to give the whole residuum to his sister, Ann Crouch, and her children.

In respect to the legacies to the testator's wards, we insist that the legacy to them is a satisfaction of their debt.

"It is an established rule, that a legacy given by a debtor to his creditor, which is equal or greater than the debt, shall be presumed to be intended as a satisfaction of the debt, *debitor non praesumitur donare.*" 2 Lomax on Executors, ed. 57, marg. p. 95, § 1, citing *Brown* v. *Dawson*, Prec. Chan. 240; *Fowler* v, *Fowler*, 3 P. Wms. 353; *Richardson* v. *Greese*, 3 Atk. 68, and other cases; and all the authorities are cited and commented upon in 2 Roper on Legacies, ch. 17, § 1, 2.

This is the strongest language which can be used in the argument in behalf of the legatees claiming this bequest. If nothing can be found in the will, therefore, to rebut this presumption, there cannot be a shadow of a doubt about the law; and there is not in the will a word, not one, which is inconsistent with the presumption. The attempt of the counsel for Jennie, Sallie, and Bettie Davis to find something in the will to rebut this presumption is about as far-fetched as any we ever heard of. They say, "the scheme of the will seems to have been to give all about $5,000 each." He gave to Ann Davis and her children their freedom and $20,000; to Mrs. Crouch, his sister, and her children, the excess of his personal estate, about $51,000 valuation in Confederate money, and his choses in action, about $48,500, and real estate $15,435 in gold or United States currency.

Now we ask, in all candor, does it not appear that these last were the true objects of his bounty, and their legacy largely in excess of the others? See 5 Ala. p. 143

We admit the testator intended $5,000 each for James and the three Davises; let it be so, and let it be received in satisfaction of their debts; but he made no provision for paying any debt to them except by the legacy; and on the contrary devoted no fund to the payment of debts, but devised his whole estate.

All of the circumstances which have been received against

the general presumption and rule of law, are collected and authorities cited to sustain them, in 12 Mass. 395, note.

1. Where the legacy is less than the amount of the debt.

2. Where, though equal to the debt, there is a difference in the duration or time of payment, making it less beneficial to the legatees.

3. Where the legacy and debt are of a different nature.

4. Where the provisions of the will are expressed to be given for a particular purpose.

5. Where the debt is contracted subsequently to the making of the will.

6. Where the legacy is contingent or uncertain.

7. Where the debt is contingent.

8. Where there is an express direction in the will for the payment of debts and legacies.

9. And, *perhaps*, where the legatee is a servant of the testator, and the debt is for wages.

It is only under the third and fifth of these exceptions to the general rule that the appellees claim.

First, as to the third exception, that the legacy and debt are of a different nature. The cases cited upon this point show such a difference, as follows:

"One gives a bond on his marriage, either within four months, to settle lands of 100 pounds per annum on his wife, or that his heirs, executors, &c., shall pay her 2,000 pounds within four months after his death; husband after this devises to his wife lands of 88 pounds per annum; this shall not be taken in part of the 100 pounds per annum, but only as a benevolence." 2 P. Wms. 614.

Now, it is not necessary to say that this case does not touch the one before us, and yet the appellees rely upon such authorities.

On page 3 of the note by Messrs. Guy and Gilliam, they say "it was not a debt due from the testator, in its technical sense, to the wards." If that be true, then they have no claim for a debt. If it was not a debt to his wards, what was it?

The kind of difference which is meant by the decisions is this, for example: the testator owes a debt which is "charged upon the land in his possession, and not on the person of the testator." 1 B. Monroe, 228.

See the general rule—Toller, 336; 2 Fonblanque, 330, and in the cases cited by the appellees.

Secondly, as to the fifth exception. When Hector Davis died, his will went into effect, and whatever he owed the Davises he owed then; for he could contract no debts afterwards, and as the legacy largely exceeded the debt, it should be regarded as in satisfaction of it. When he made his will, there was a balance due from him; it might have been more or less at his death.

The report of commissioner Fleming answers all objections in respect to the debt not being known and ascertained by Davis, because the commissioner expressly reports, at page 127 (top), 182 (margin), that "Hector Davis kept an account of receipts and disbursements as guardian as aforesaid," "which disclosed not only perfect fairness towards his wards, but even liberality."

The case is, therefore, the ordinary and simple case of a testator devising much more than he owed to his wards, to whom he was indebted. The total of his indebtedness, if all the credits to which the commissioner thinks him entitled were allowed him, was less than $2,000 to each, and he bequeathed to each $5,000.

The opinion of Judge Waller R. Staples of the Court of Appeals of Virginia attempts to answer our argument in respect to the legacy in favor of the nieces of Hector Davis, but we respectfully submit it is a total failure, and does not answer the argument at all. That opinion does not attempt in the slightest degree to explain the fact which is so conclusive in the estimation of all the authorities, that the testator left no fund, or any part of his estate, out of which to pay the debt to his wards, for he devises his whole estate.

After the special pecuniary legacies he says, "whatever

balance I may be worth I want given to my sister, Ann Crouch and her children." Those words, whatever balance, are equivalent to *entire balance* which I may be worth, *i. e.* the entire balance of my estate, and the Court furnishes the explanation in the attempt to escape the conclusion.

The testator had those nieces in his mind when he made the will, and he did not therefore forget the debt which he owed; but the Court properly says he was not aware of the existence of other debts, and therefore, we say he meant to pay those debts by the legacies; and the Court of Appeals of Virginia, if Judge Staples is to be taken as their exponent, rather makes the law than expounds it, and gives the Judge's impression of what the law should be, which is a most dangerous and pernicious practice, of which any court can be guilty.

Men hold their property and assert their rights by the law as it is, and not by the law as it should be; and when they appeal to the Court they ask it to say what the law is, and not what it should be; and when the Court, instead of answering that appeal, undertake to go beyond even the power of the legislature, and say what the law ought to be, instead of what it is, the power which even the legislator does not possess, they do not enforce and protect, but destroy rights, and can therefore no longer be called courts of justice, and one man loses property and another it, without fault on one side or right on the oth great bulwark of right and wrong by which th protected and the latter destroyed, is broken do an intelligent judiciary.

Passing from this point we proceed to consider the other points of the case. First, as to the $20,000 directed by the testator to be invested in State stock.

The chancellor, in his opinion, page 135 (top), 193 (margin) of the record, justifies the executor for his failure to invest the $20,000 in State stock, as directed by the will of his testator, because of the investment of that money in

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Confederate bonds under the authority of an order of court—because of the heavy premium he would have to pay for State stock,—the uncertainty of its ultimate value, and the notice he had received from the receiver of the Confederate government that the government would claim the legacy as confiscated property.

Without repeating here what has been already said as to the duty of an executor to invest according to the directions of the will of his testator, but taking that for granted which the effort to excuse it admits, we will proceed to consider the reasons assigned in support of the excuse, and

1st. As to the order of court.

The statute to which reference has been heretofore made, Acts of '62, '63, p. 81, is the foundation of the order, and affords not the slightest justification for it. The act contemplates and provides for a wholly different case from this, viz: one in which the fiduciary is "unable to pay over to the *cestuis que trust*, or parties entitled thereto," "moneys in his hands."

And it manifestly was not at all in the contemplation of the legislative mind, or within the scope of the act, to change any man's will, where that will could be carried into execution, and intended to provide, and does provide, only for a case in which the fiduciary could not lawfully dispose of the money to which the beneficiary was entitled without an order of court. And it is simply to stultify the Legislature to suppose that with a knowledge of a will authorizing an executor to invest in State stock, it would pass a law giving him leave to ask the court to give him leave to do the same thing.

Here, on the contrary, there was no impediment, and the executor could have invested without difficulty; the order, therefore, founded upon that statute affords no excuse to the executor because it did not apply to the case; but if it did, does it afford any justification to the executor?

Manifestly not.

The will said to the executor, invest in Virginia State stock. The court said do that same thing, or invest in other securities as you please. Now, the court did not undertake to control the executor, and did not therefore, direct him, or command him to make any particular investment, but left him perfectly free to act as the will directed him to act, and his action in opposition to the will was purely voluntary, which leaves him exactly in the position in which he would have stood if there had been no order; the order, therefore, must be regarded as out of the question.

2. As to the high price of the stock.

This reason is wholly independent of the order, and would be good without any order, if good at all, and we submit, with all respect, is not good under any circumstances; for if good in this case it would be equally good in every case in which the stock selected by the testator for an investment rose in value after his death, and that, we are sure, nobody will insist upon, for the rise in the price of the stock, instead of depreciating the stock, as an investment, only commends it, because it shows the stock was worth more than the currency; but in truth the order condemns this excuse, for the judge who made it with full knowledge of course of the price of the stock, which was a matter of notoriety, said to the executor you *may* purchase it. We are only surprised the chancellor did not observe that when he made this excuse.

3. As to the threat of confiscation.

We do not perceive how that could affect the investment at all, as the threat was not to confiscate the State stock, but to confiscate the legacy, which was the only thing that could be confiscated, if anything could, and that could be just as well confiscated under one form of investment as another. And if the investment had been made in State bonds, it would have been made in the name of the executor, and not of the devisee, exactly as it was made, and, therefore, would have been no more accessible to the confis-

cating officer than it was in the form in which it was made. But what business had the executor to change the investment directed by his testator, and authorized by the court, because of any threat by the confiscating officer, even if he could show, which he does not, and cannot, that by changing the investment he could elude the confiscating officer? But here again the order answers the excuse, for the executor informed the court, or he did not, of this threat; if he did, the court disregarded it, and said invest, notwithstanding the threat; if he did not, then the manifest threat had nothing to do with the investment, as it is very obvious it did not.

Upon the whole, we submit that the order of court had not the slightest influence upon the investment, and furnished no excuse for it, and leaves it as it is, a clear, unpardonable *devastavit;* and this conclusion is in truth avowed by the executor in his letter to Virginia Davis, of the 28th December, 1866, to be found p. 88 (top), 125 (marg.) of the record, in which, speaking of the direction of the will to make the investment in State stock, he says: "I saw the injustice of such an investment, and notwithstanding I was directed by the will to do so, I refused to make it, well knowing if it was done, it would deprive you practically of what was intended to be left you by your father. In consequence of thus acting, some of the other legatees have brought suit against me, claiming the will ought to have been carried out, and the investment made," thus avowing, not that he had obeyed an order of the court, but disobeyed the direction of his testator.

Lastly, as to the uncertainty of the ultimate value of State stock.

It is difficult to treat this reason with that gravity which is consistent with our very cordial and sincere respect and esteem for the Judge who gives it.

What was there to create doubt of the value of Virginia State stock? The reply is the possible fall of the Confed-

eracy, and if for that reason State stock should be doubted, how could Confederate stock be regarded better than State stock? If we may be pardoned for the use of a metaphor in a law argument, the State stock was the shadow of Confederate stock; its position depending upon the location of the body which cast the shade. Is it not positively ludicrous to say, then, that the State stock was unsafe, and the Confederate stock safe, since the State stock was certainly safe if the Confederate stock did not become worthless, and, therefore, the Confederate stock must fail before the State stock, and yet the executor is justified in paying a large premium for Confederate stock in preference to State stock, because State stock bore a higher premium than Confederate stock.

Prior to the late war between the Northern and Southern States, no case can be found, of which we are aware, bearing upon the authority of the court to authorize an executor to act in direct opposition to the will of his testator, where that will was duly established according to law, and was capable of being executed without violating any law or committing any gross immorality; because it never did occur to any court that it had the power or authority to render such a decree.

The cardinal rules in the interpretation of wills are very few and simple. The first is, that the intention of the testator, as expressed in the will, shall be carried into effect, thus affirming in fact what we assert—that the will of the testator shall prevail, and shall be executed. The second is, that for the purpose of ascertaining what the will is, the whole of it, and every part of it, shall be considered. And the third is, that while it may be lawful to supply words to carry out more distinctly what is ascertained to be the will and intent of the testator, no words shall be interpolated which are in conflict with the language used in the will.

If, therefore, the circuit court of Richmond had, by its order, directed the executor of Davis to violate the will of testator, and not make the investments which he directed,

the order would have been clearly erroneous, and simply void, and it would have been the duty of the executor to appeal from it. But, as we have already shown, the court did not attempt to constrain the executor at all; it simply said to him, You may obey the will, or you may not, as you please; and the executor understood it as going no farther than that, if indeed as far; for in the letter to Virginia Davis, page 88, he says: "Notwithstanding I was directed by the will to do so (that is, to make the investments in State stock), I refused to make it," showing that he did not consider him as forbidden by the court to make the investments; for his language is not at all appropriate for that purpose. And he justifies himself in departing from the directions of the will, not by an order of the court, but by telling an absurd story; for he says that "twenty thousand dollars of our currency would have bought you but a few thousand dollars of State stock, which is now (November, 1866) worth but forty cents on the dollar." The Confederate bonds in which he made the investment being at the said date not worth a cent, which he takes care not to say.

But Confederate money, at the death of the testator, was worth (in 1863) three for one, and State bonds had not risen in the same ratio.

If, however, the court had no power to constrain the executor to invest contrary to the directions of the will, it had no power to authorize or justify him in doing so.

But the order of the court, as far as Ann Davis and her children were concerned, was utterly void,

1. Because they were no parties to the proceedings in 1864 or 1865, when the two orders were made, but were, as they now are, *residents of the city of Philadelphia, in the State of Pennsylvania*, and the Legislature of Virginia never meant that any court should make a decree or order impairing or destroying the rights of her own citizens in causes to which they were not parties, and still less in re-

spect to citizens of another State; and if they did, the orders were unconstitutional and void, especially as to citizens of other States. See *Horn* v. *Lockhart*, 17 Wall. 570: *Dean* v. *Nelson*, 10 Wallace, 172; *R. R. Co.* v. *Trimble*, 10 Wall. 367; *Lasere* v. *Rochereau*, 17 Wall. 437.

In the case of *Dean* v. *Nelson*, the party in whose favor the decision was rendered in this honorable court, was within the Confederate lines, and the war was *flagrante* at the time the court below in the Federal lines decided the cause against him; and such was the case of Ann Davis and her children when the order was made by the circuit court of Richmond, the case being reversed, they living in the North. And this court has repeatedly decided since that such an order, made under such circumstances, was void, some of them wiping out some of the "blots upon the judicial record" with which Underwood had stained it. *McVeigh* v. *Underwood* (not yet reported).

But the order of the court was void for still another reason, which will have at least as much, if not more, weight with this honourable court.

In the case of *Botts & Darnal* v. *Crenshaw*, Chases Decisions in Bradley Johnson's reports, page 225, the Chief Justice decided that an order of the hustings court of Richmond, "ordering and authorizing defendant to invest the funds of the plaintiffs in his hands, they being citizens of a State adhering to the United States (that being Kentucky), residing there, cannot be recognized by this court; because it is an act in derogation of the rights of persons beyond the jurisdiction of the *de facto* government of Virginia, of which that court was a constituent part; and because it is an act the tendency and effect of which is to sustain the cause of the Confederate government in its struggle against the United States,"

The investment was made, as the statement of the case shows, in Confederate bonds, which perished with the power which made them.

The jurisdiction of this honorable court having been fully established on the Federal question, it remains only to be shown that, having jurisdiction of the cause on that question, it has thereby obtained jurisdiction to hear and decide the whole cause, and every question in it. It is the wise policy of the law not to cut up cases into several and multiply suits, when one case will settle the whole controversy. The maxim *interest rei publicæ sit finis litium* is founded in good sense, humanity, and economy, and therefore always cherished by courts of justice; and we humbly trust our unfortunate and much abused clients will find, by your righteous and wise decision in this cause, that, concurring with the authorities, they are not aliens to all right in Virginia because they are not residents of her soil. See *Elliott* v. *Piersoll*, 1 Peters, 340.

Respectfully submitted.

JAMES LYONS,
JO. LANE STERN.

IN THE

SUPREME COURT OF THE UNITED STATES.

ANN DAVIS AND OTHERS

vs.

ANN CROUCH AND OTHERS.

[No. 208.]

BRIEF FOR APPELLANTS.

The facts of the case are sufficiently stated in the brief of Messrs. Lyons & Stern.

The questions presented for consideration are as follows:

First. Has the Supreme Court jurisdiction of this appeal from the Court of Appeals of Virginia?

Under this head two points are made by Mr. Robinson for appellee:

1. Is the decree of the Virginia Court of Appeals final, within the meaning of the Judiciary Act of Congress?

2. Is the subject matter of that decree such as to give this court jurisdiction by appeal?

1. This decree is final.

The reason upon which the statute is based limiting appeals to this

court from a State court to final judgments and decrees, is that the State jurisdiction shall be exhausted, with no chance of further relief under it, and making a resort to this court the only refuge for redress.

Cases are cited, decided in this court, where the State court of final resort had made a decision sending back a case for further proceedings, and this court denied an appeal here; but whenever it appears that the State court has done all it can do in the matter, and nothing more remains to be done in respect to the particular subject of complaint, the appeal is allowed. If the litigation is ended on the point at issue, the appeal lies. Houston v. Moore, 3 Wheat., 433; Atherton v. Farlee, 1 Otto., 143; Zeller v. Surtzer, id. 487; Moses v. Mayor, 15 Wallace, 387; Parcels v. Johnson, 20 id. 653.

In all these cases the test is stated: Is any further judicial action to be taken which may effect the decision already made by the State court? If there be, the appeal here will not lie; if not, it will lie.

That the decree here complained of respecting the sanction of the court to the executor's investment in Confederate bonds, under a law of the Richmond Legislature passed during the war, was final and exhausted State authority is beyond doubt. The chancery court overruled the exception to the allowance of that investment as a credit to the executor, and the Court of Appeals affirmed it.

It is true the cause was sent back for further enquiry on *another* point, but for none on *this*. On this point the action was final and irreversible, either by the lower court or by the Court of Appeals, upon any future appeal, as has been distinctly decided in Campbell vs. Campbell, 22 Grattan, 649. See language of Moncure, P., p. 671.

So that on this point the court had made a decision for which no court in Virginia, not even the Court of Appeals, could reverse or modify. It was beyond the reach of judicial power in that State, and had passed *in rem adjudicatam*. It was final. No further decree in the cause could affect it. All other action must respect other matters; none could touch this.

2. Does the subject matter of the decree make it cognizable by appeal here?

The decree of the chancellor, of which his opinion is a part (rec. pp. 129–138), shows his decision and the grounds of it; and so the decree and opinion in Court of Appeals (pp. 139–147). That decision was,

that, *quoad*, the legacy of these appellants, the investment of assetts by the executor in Confederate bonds was valid and a bar to their claim, because made under a decree of the court of the Richmond government according to a law passed by it authorizing such investments to be made by fiduciaries under orders of its courts. No other ground of defence is stated; none other could avail, for no such investment *ex mero motu* could be justified, and the only shield which could avail must be the order of the court under that law. This all appears of record, and that it was done without the consent and in the absence of these appellants from the State of Virginia. (See Murdoch vs. City of Memphis, 20 Wall.)

Second. The question on the merits is, shall the decision sanctioning these Confederate investments be reversed?

REMARK:

(a). It was made in a proceedure to which appellants had not appeared.

(b). It was made in their absence from Virginia, and when they they were alien enemies, being resident in Pennsylvania, and during a flagrant war (rec. p. 21, bill of ex.).

(c). It gave effect to a law prejudicial to the rights of citizens of the United States; and to a policy contrary to the Government of the United States, by giving sanction to investments in bonds issued by the Confederate States as a means of war against the United States.

(d.) The orders of the court gave the executor leave to invest in Confederate bonds or State bonds; he chose the former; his actions under that leave of court was held in the Court of Appeals to protect him.

Such a decision cannot be sustained in this court; and, however citizens of Virginia might be affected by such action by a Virginia executor; no principle of law can require a citizen of Pennsylvania to be barred of his right by an order made in his absence, during war, contrary to the law and constitution which controlled him *de facto*, and governed both those states, as this court holds, *de jure*, as well as *de facto*. Dean vs. Nelson, 10 Wallace; Horn vs. Lockhart, 17 Wallace, 570.

Id 437, Keppel vs. P. R. R. Co.; Chase Reports, 167.

The decree must be reversed on this ground:

Third. If this court will, under the views taken in Murdoch vs. City of Memphis, hold that jurisdiction having attached on this point, it will consider and decree on the whole case; then I refer to the full note of Messrs. Lyons & Stern upon the various questions raised in the cause in the chancery court.

J. RANDOLPH TUCKER,
Counsel for Appellants.

March 28th, 1877.

Supreme Court of the United States.

OCTOBER TERM, 1876. NO. 208.

ANN DAVIS AND OTHERS,
Plaintiffs in Error,
against
ANN CROUCH AND OTHERS,
Defendants in Error.

FROM THE SUPREME COURT OF APPEALS OF VIRGINIA.

CONWAY ROBINSON,
Counsel for defendant in error.

March 1, 1877.

R. O. POLKINHORN, PRINTER.

Supreme Court of the United States.

OCTOBER TERM, 1876. NO. 208.

ANN DAVIS AND OTHERS,
Plaintiffs in Error,
against
ANN CROUCH AND OTHERS,
Defendants in Error.

FROM THE SUPREME COURT OF APPEALS OF VIRGINIA.

Appellant's counsel has not filed a proper brief.

That which the counsel for the appellant has filed with the clerk of this court deals largely with matters which have been in dispute in a court of the State, without recognizing the great difference between an appeal to this court from a final decree of a Circuit Court *of the United States* and a writ of error to a final decree of the *highest court of a State.* The appellant's brief is certainly not according to the 'amendment to the 21st rule' (14 Wallace, pp. xi and xii); it is not a brief containing an assignment of errors and (in the order there stated) what else is thereby required.

Considering that there cannot be, for the consideration of this court, any question, unless it arises under the act of February 5, 1867, c. 28, 14 Stat., p. 386; Rev.

Stat., p. 132, § 709, as expounded in *Murdock* v. *City of Memphis*, 20 Wallace, 636, the counsel for the appellee files the following:

Statement of the Case.

Hector Davis, of the city of Richmond, in Virginia, lived nearly four years after making the will of the 21st of March, 1859 (p. 11). On the 13th of March, 1863, it was proved; and the testator's nephew, R. D. James, a legatee therein for $5,000, qualified as executor, giving bond as such with sureties. Under an order of the 21st of May, 1863 (p. 14), the testator's personal estate was appraised at $91,020. (p. 11.) On a bill filed in the Circuit Court of the city of Richmond, by James, in his own right and as executor, decrees or orders were made February 20, 1864 (p. 18), November 25, 1864 (p. 13), December 3, 1864, (p. 14), and March 11, 1865, (pp. 14, 15). The cause was "depending and undetermined when the original papers were all burnt" "in the great fire of Richmond in the month of April, 1865." (p. 10). Upon such allegations, in a petition filed September 22, 1865, the court ordered that the cause be docketed; and made the rule, p. 15, to which James filed the answer, p. 16 to 18. The decree of December 3, 1864, was set aside October 6, 1865 (p. 18 and p. 29); and the court then ordered James to render an account of his transactions as executor, before a commissioner, who was directed to "take an account of all the assets belonging to said estate and of all claims due by the same." (p. 18). On the 10th of November, 1865, a new bill was filed by James as "executor and legatee of Hector Davis," (p. 21 to 24), and the court made the order, (p. 20). The Commissioner's report of February 18, 1868, is p. 29, *et seq.* The residuary legatees named in the testator's will are his sister Ann Crouch and her children. *They are not*

plaintiffs in the present writ of error; and after such time as has elapsed since the decree could not, if they would, obtain a writ of error to it. It is needless, therefore, in respect to any supposed interest of theirs, to take here any more particular notice of their exceptions to the report of 1868; neither of the sixth of their exceptions, p. 60; nor of any of their additional exceptions, p. 83 to 85. Their petition, p. 85, the order of February 27, 1869, pp. 85, 86, and the statement, pp. 86, 87, are wholly irrelevant to any question before this court.

Though there had been an order of publication, pp. 28, 29, it is not until after the order of May 19, 1869, (p. 86), recommitting to the commissioner the report, with the exceptions thereto, that Ann Davis and her children appear in the cause. Their first appearance was on the 15th of November, 1869, when answers were filed (p. 87 to 89) for the children and their mother. These answers have not *drawn in question the validity of a statute of, or an authority exercised under, a State, on the ground of their being repugnant to the constitution or laws of the United States.*

The answer of Ann Davis (the mother), (p. 87) states that $20,000, which the will directed the executor to invest in Virginia 'State stock,' was not so invested; and that he "pretends that he invested the money in Confederate bonds;" that "whether he did or not" she "does not know," but she is advised and insists that such investment, if made, was illegal, and neither she nor her children are bound by it; that she and they are entitled to have the said $20,000 paid by the executor, and invested as the will directs;" "that she is wholly ignorant of the manner in which the said executor has discharged his duty, but she has been informed that he has not performed it faithfully."

In addition to payments mentioned in her answer (p. 87) as having been made her to the amount of about $1,600,

there was an order made Nov. 22, 1869, (p. 89) for a further payment to her "on account of her legacy," "to be charged to her in the accounts of the estate."

Under the order of May 19, 1869 (p. 86) the commissioner made his report (p. 89 *et seq*). On the part of the executor notes of the 20th of May, 1868, and 23d June, 1868 are referred to in a note of March 7, 1870 (p. 102), wherein it is shown as follows:

1. "That by far the greater part of the debts—appearing to be due from different persons to Hector Davis, from his books—were due, if at all, from residents of other States, for which the executor was not accountable; that by reason of the stay laws and the general dislocation of public affairs, suits would generally have proved unavailing, and have resulted in loss to the estate; that many of the apparent debts were not really such; and that the executor did all that a prudent man should have done under the circumstances for the benefit of the estate."

2. "That from the 1st of January, 1863, the only currency in the city of Richmond was that of the Confederate States, in which only could debts be collected, and for which only could sales be made of slaves, stocks, or other property; that almost all investments after that time were made in Confederate States bonds; that such investments were made by the most prudent, experienced, and successful business men, and were also commonly made by fiduciaries, under the sanction of the laws and the courts."

7. "That he (the executor) was at first prevented from making investments in bonds of the State of Virginia, because he thought the prices too high in reference to the money of the time and other values; and that he was soon prohibited to do so by notice from the authorities of the Confedeate States under the sequestration laws; for which reason he made investments in Confederate States bonds, intended only as temporay investments, but which he was nevertheless authorized to make by the authority of laws and the courts, and by the example of prudent and experienced men, as already shown."

James Lyons, Esq. being counsel for Mrs. Crouch and her children and Ann Davis, it seems that, subsequent to the 4th of May, when that report was filed (p. 89), to wit: on the 28th of that month he made on an exhibit, which may have been that report, an endorsement (p. 116) stat-

ing that, " Mrs. Crouch and her children and Ann Davis except to this report for the reasons, causes, and errors assigned in the exceptions of Dec., '65 and May, '68, to the report returned in Feb., 1868." Afterwards, to wit: on the 7th of June, 1870, the commissioner, at the instance of Mr. Lyons, made the special statements A. A. and C. C. (p. 116 to 120). On the 13th of June, 1870, there were exceptions for the plaintiff (pp. 105, 106), which state as follows:

" As to the investments in confederate bonds and the special statements A A and C C, reported at the request of Crouch's counsel, disallowing them, the court is referred to the same note of 7 March, 1870, and the other notes therein referred to of 20 May, 1868 and 23 June, 1868. The position taken by Crouch's counsel, in the note of 8th June, 1870, is surely untenable. Under the sanction of an act of Assembly, the court exercising a jurisdiction and discretion expressly conferred upon it, authorized the investments. The executor, in conformity with this authority made the investments, as other, of the best judgment and capacity, of our business men were doing with their own funds. Without any allegation, much less proof, of any negligence or want of judgment, and in despite of the act of Assembly and the authority given by the court, it is sought to charge the executor with a devastavit, and this for no other reason than that he had availed himself of the privilege conferred by the law, and almost invited by the law, of asking the opinion and sanction of the court for such investments."

The cause being heard, the Chancery Court, on the 22d of July, 1870, pronounced its opinion, wherein, after referring, on p. 134, to the act of March 5, 1863 (Sess. acts 1862–3, p. 81), and the act of Feb. 28, 1866 (Sess. acts 1865–6, p. 187), and the decisions in *Watson and wife* v. *Stone*, 40 Alab., 451; *Ivey and wife* v. *Coleman*, 42 Id., 410, and *Trotter* v. *Trotter*, 40 Miss., 710, the Judge's conclusion (p. 136), is " that the losses of the estate are to be traced to the result of the late war, and are not attributable to the negligence, bad faith or bad management of the executor;" and he made the decree p. 129 to 131.

An appeal to the Supreme Court of Appeals was allowed on a petition assigning seven errors pp. 8, 9, of which the third is " that the legacy to Ann Davis should have been invested according to the direction of the will, and the failure to do so by the executor made him personally responsible for the legacy to the full amount which the investment would have benefitted the legatee." But the petition does not draw in question the validity of a statute of, or an authority exercised under, the State, *on the ground of their being repugnant to the constitution or laws of the United States.* On the contrary, the 4th assignment of error made in that petition p. 9, is as follows :

" It was the duty of the executor to have paid off the legatees *in the currency of the day*, which was in his possession. Debts and legacies stand upon a very different footing. The latter are voluntary *donations, not affected by the constitution of the State or of the United States*, and they are *to be paid out of the currency in circulation at the time* that the bequest is made, which is when *the will is admitted to probate ;* otherwise the purpose of the testator might be utterly defeated, and his whole estate absorbed by a single legacy. Thus, when he bequeathed $20,000 to Ann Davis out of a personal estate, say, of $100,000 if the currency was at 5 for 1 in gold, and the legacy is to be treated as a gold demand, it would take the whole estate to pay it ; but even debts contracted and falling due during the confederacy, were payable in confederate money."

Such, also, is the nature of the argument for the appellants before the Supreme Court of Appeals. That argument does not in any part of the 20 pages which it occupies in 23 Grat., p. 72 to 92, draw in question the validity of a statute of, or an authority exercised under, a State *on the ground of their being repugnant to the constitution or laws of the United States.*

Supposing then the decree of April 22, 1873 (p. 139), be considered a *final* decree in a " suit in the highest court of a State in which a decision in the suit could be had," it does not appear that there was drawn in ques-

tion, that which is required to be drawn in question—and it does not appear that there was such decision, and on such ground, as is necessary to be shown—to authorize the decree to be re-examined in the Supreme Court of the United States.

The writ of error awarded is on the petition of Ann Davis and her children (p. 147); the testator's sister, Ann Crouch and her children being among the defendants in error.

In the petition p. 147, wherein it is attempted to state "the point upon which the jurisdiction of this honourable court must depend," it is said (p. 148), that the Supreme Court of Virginia "recognizes the fact that your petitioners were alien enemies, and sustained on that ground the investment of their legacy in Confederate bonds." That it is very inaccurate to say the investment was sustained *on that ground* appears most clearly in the opinion of the court pp. 97, 98, 99, from which the following is extracted:

"It is to be borne in mind that the condition of the country, and of all securities, public and private, was altogether different in 1863 when the testator died, from what it was in 1859, when the will was executed. The executor being greatly embarrassed by this altered condition of affairs, and other difficulties attending the administration of the assets, filed his bill in the Circuit Court of Richmond in order that the trusts of the will might be executed under the supervision of a Court of Chancery. In the progress of the cause, the court, upon the petition of the executor, entered an order or orders, authorizing him to invest the currency in his hands in Confederate or State securities. The investment was thereupon made in Confederate bonds. *It is true that Ann and her children were alien enemies and could not be served with process or brought before the court. Nevertheless, the executor had the right to apply to the court for its assistance; and the court had the right to make just such an order as was made. No existing investments were thereby altered, no rights were violated. Confederate currency received properly, in a due course of administration, was simply converted into Confederate bonds, until it could be applied to the claims of creditors or legatees.* The estate, exclusive of this fund, and exclusive of the realty, was greatly more than sufficient

to pay all the legacies. But for the loss of this property, the investment could now be made according to the directions of the will, and the burden would fall upon the residuary legatees, who were parties to the suit, must have been apprized of what was done but made no objections to any of the orders entered in the cause. But *let it be conceded that these orders were not binding upon the non-resident parties. The act of the executor in bringing the suit and invoking the aid of the court, evinces, I think, entire good faith, due diligence and a laudable desire to protect the rights of creditors and legatees, and I do not see how it is possible, consistently with the rulings of this court, to throw upon him the loss of this fund. Elliott* v. *Carter, &c.*, 9 Grat., 541; *Myers's Ex'or* v. *Zetelle*, 21 Grat., 733."*

Further in the petition to this court (p. 148) there is mention of a petition for rehearing "charging that the order under which the investment was made was void as to them by the authority of the case of *Dean* v. *Nelson*, reported in 10 Wall., p. 172." It is true that after the opinion and decision (p. 140 to 144, 23 Grat., p. 92 to 101) were delivered and pronounced, there was a petition for rehearing (p. 145) which was overruled (pp. 146, 147); and in that petition for rehearing, *Dean* v. *Nelson* is cited. But no such ground had been taken either in the Chancery Court or in the petition to the Supreme Court of Appeals of Virginia, for an appeal, or upon the regular hearing of the case in that court. The objections were *not* to the authority of the court to make the orders of February 20, 1864, p. 18, and March 11, 1865, pp. 14, 15, but were on the ground that the executor had not acted according to the will: there was no objection on the ground of violation of the constitution or of any law of the United States. Therefore *Dean* v. *Nelson*, which was a case not of a writ of error to a decree of the highest court of a State but an appeal from a decree of a Circuit Court of the United States, can have no application here.

*Although it is perhaps unnecessary to quote further from p. 99 of 23 Grat., yet it may be well to note that in that volume in the table of errata, the first item is "page 99, line 11 from top, strike out '*not*.' See also dep.n of R. D. James, p. 98."

Brief of the Argument.

I. This court has no jurisdiction, unless the decree of April 22, 1873, can be considered final, *Houston* v. *Moore*, 3 Wheat., 433; *Gibbons* v. *Ogden*, Id., 448; *Winn's heirs* v. *Jackson*, *&c.*, 12 Id., 135; *Brown* v. *Union Bank*, 4 How., 465; *Pepper*, *&c.* v. *Dunlap*, *&c.*, 5 Id., 51; *Reddell*, *&c.* v. *Bryan*, *&c.*, 24 Id., 420; *Tracy* v. *Holcombe*, Id., 426; *Moses* v. *The Mayor*, 15 Wallace, 387; *Moore* v. *Robbins*, 18 Id., 588; *St. Clair Co.* v. *Lovingston*, 18 Id., 628; *Parcels* v. *Johnson*, 20 Id., 653; *McComb* v. *Commissioners*, 91 U. S. (1 Otto,) 1. And even if that decree could be considered final, the writ of error should be dismissed for want of jurisdiction. For it does not appear that any of the questions stated in the 25th section of the judiciary act of 1789, ch. 20, did arise in the court below; still less does it appear that a decision was actually made thereon by the same court, in the manner required by that section. *Fisher's lessee* v. *Cockerell*, 5 Peters, 255; *Menard* v. *Aspasia*, Id., 505; *City of New Orleans* v. *Armas*, *&c.*, 9 Id., 236. According to a long series of adjudications, it is not sufficient to show that a question might have arisen or been applicable to the case; unless it it is further shown on the record that it did arise, and was applied by the State Court to the case, *Crowell* v. *Randell*, 10 Peters, 398; *McKinney*, *&c.* v. *Carroll*, 12 Id., 66; *Choteau* v. *Marguerite*, Id., 507; *Ocean Ins. Co.* v. *Polleys*, 13 Id., 157; *Coons*, *&c.* v. *Gallagher*, 15 Id., 18; *Fulton*, *&c.* v. *McAffee*, 16 Id., 149; *Mills*, *&c.* v. *Brown*, *&c.*, Id., 525; *Com. Bank* v. *Buckingham's exor's.*, 5 How., 317; *Smith* v. *Hunter*, *&c.*, 7 Id., 738; *Grand Gulf R. R. & Banking Co.* v. *Marshall*, 12 Id., 167; *Lawler &c.* v. *Walker*, 14 Id., 149; *Robertson* v. *Coulter*, *&c.*, 16 Id., 113; *White* v. *Wright*, *&c.*, 22 Id., 19; *Medberry &c.* v. *State of Ohio*, 24 Id., 413; *Porter*, *&c.* v. *Foley*, 24 Id., 415; *Railroad Co.* v.

Rock, 4 Wallace, 177; *Northern Railroad* v. *The People*, Id., 384; *Railroad Co.* v. *McClure*, 10 Id., 511; *Parmelee* v. *Lawrence*, 11 Id., 36; *Knox* v. *Exchange Bank*, 12 Id., 379; *Northern Railroad* v. *The People*, Id., 384; *Caperton* v. *Bowyer*, 14 Id., 237.

In the opinion of the court, delivered at Jan. T., 1867, by *Woodbury*, J., it is said:

"The principle under which the Judiciary Act of 1789, allows this interference of ours in the relations between the two governments, always of so sensitive and responsible a character, is, that no goverment can be efficient or just without the means of self protection; and hence, that those who act under it or claim rights beneath the shield of its laws, should, within its own territory, be able to appeal to its own tribunals for relief whenever their claims under it are decided against in the courts of the States. But prejudices here are to be guarded against as well as there; and hence the paramount rule of construction, in all cases of this kind, ought to be, not to interfere at all unless the decision is shown to come clearly within the letter and spirit of the act of Congress permitting an appeal; and, when interfering, not to overrule the judgment of the State court unless clearly erroneous." *Scott &c.* v. *Jones*, 5 How., 375.

The jurisdiction is not more extensive under the act of Feb. 5, 1867. *Ins. Co.* v. *The Treasurer*, 11 Wallace, 204. *Bradley*, J., in delivering the opinion of this court at Dec. T., 1871, said:

"Where it appears by the record that the judgment of the State court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws, or treaties of the United States, or upon some other independent ground; and it appears that the court did, in fact, base its judgment on such independent ground and not on the law raising the Federal question, this court will not take jurisdiction of the case even though it might think the position of the State court an unsound one"—Where it does not appear on which of the two grounds the judgment was based, then, if the independent ground on which it might have been based was a good and valid one, sufficient of itself to sustain the judgment, this court will not assume jurisdiction of the case." *Klinger* v. *State of Missouri*, 13 Wallace, 273.

Many other cases concur in showing that, in the present case, this court has no authority to review the judgment of the State Court; and that the writ of error should be dismissed for want of jurisdiction. *Smith* v.

Adsit, 16 Wallace, 185; *Moore* v. *Mississippi*, 21 Id., 636; *Smith* v. *Adsit*, 23 Id., 368; *Long, &c.* v. *Converse, &c.*, 91 U. S. (1 Otto), 105; *McManus* v. *Sullivan, &c.*, Id., 578.

II. If those things appeared, which it is essential should appear, to give this Court jurisdiction over the decree of a State court, and if this court could examine the decree, then, according to *Murdock* v. *City of Memphis*, 20 Wallace, 636, that decree should be affirmed. *Thompson* v. *Smith*, 8 Wallace, 1; *Delmos* v. *Ins. Co.*, 14 Ib. 665. The case comes within the influence of principles established in England, 7 Rob. Pract., ch. 70, § 8, p. 1023 to 1025; and in Virginia, *Davis* v. *Harman*, 21 Grat., 194; *Dixon &c.*, v. *McCue's Adm's, &c.*, Id. 373; *Walker's Exc'r, &c.*, v. *Page, &c.*, Id. 636. The decree is in accordance with the decision in *Myers' Exc'rs* v, *Zetelle*, Id. 733, which the counsel for the appellants has, on p. 6 of his brief, cited with approbation; and with decisions since that case *Hale* v. *Wall*, 22 Grat., 432; *Fugate* v. *Honaker's Exc'rs, &c.*, Id. 412. The counsel for the plaintiffs, in error argued before the court below and again argues before this court (on p. 13 of his brief), "that Confederate debts were payable in Confederate money; and that legacies given by the testator were payable in 'the currency of the country in which he was domiciled at the time of his death'" (in 1863). But he complains of the failure of the executor to invest $20,000 'in State stock;' as to which the ground of decision of the Court of Appeals (already quoted, *ante* pp. 7, 8,) appears not to be in conflict with *Dean* v. *Nelson*, 10 Wallace, 172, or *Railroad Co.* v. *Trimble*, Id. 377, or *Lasere* v. *Rocherau*, 17 Id., 438, or *Horn* v. *Lockhart*, &c., Id. 571. Besides, what is quoted, *ante* pp. 7, 8, as to investments in Confederate bonds, the Court says:

"The executor honestly exercises the discretion vested in him by the Court in purchasing them. If we are now to say that he is liable, because

he did not purchase State bonds, rather than Confederate, we must declare that he had no discretion in the premises. We must hold that whatever may have been the condition or the resources of the estate, or the circumstances surrounding the executor, he could not make, and the Court could not authorize any disposition of the funds until this legacy was secured. *At that time there were large claims against the estate, which could not be paid. Until they were settled, however, the executor was under no obligation to pay legacies or make investments for legatees. He had the right, under the sanction of the Court, to retain the funds, under his control, until the liabilities of the estate and the rights of all parties were settled and adjusted. If loss has thereby ensued, it is not fairly attributable to any breach of duty on the part of the executor, and the Chancery Court, very properly, so decided.*" 23 Grat., 99.

Such is the course of decision in the state; established in cases which preceded this, and followed in subsequent cases. *Staples, &c.* v. *Staples, &c.*, 24 Grat., 226; *Mead* v. *Jones, &c.*, Id., 358. Moreover, it does not appear that the present plaintiffs have been injured by the decree. Before them payments were to be made to creditors and some other legatees. And residuary legatees are not complaining.

CONWAY ROBINSON,
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March 1, 1877.